

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the Public Service Commission of West Virginia, in the City of Charleston, on the 9th day of January, 2003.

CASE NO. 02-0809-T-P

VERIZON WEST VIRGINIA INC.

Petition in the matter of Verizon West Virginia Inc.'s
compliance with conditions set forth in 47 U.S.C. § 271 (c)

COMMISSION ORDER AND CONSULTATIVE REPORT

Verizon West Virginia Inc. ("Verizon WV"), a Bell operating company, is prohibited by federal law from providing in-region interLATA services, that is, in-region long distance services, until it first establishes that its local market is open to competition. In this proceeding, Verizon WV has asked the Public Service Commission of West Virginia ("Commission") to conclude that the local market is open to competition, so that Verizon WV may make an application with the Federal Communications Commission for authority to provide in-region long distance services.

After having conducted proceedings, which included a series of workshops and evidentiary hearings, and deliberating upon the evidence produced, the Commission concludes that sufficient competition exists and that it would be in the public interest for Verizon WV to receive authority to provide such in-region interLATA services in this state. Accordingly, the Commission issues this order and consultative report to the Federal Communications Commission.

BACKGROUND

On February 8, 1996, then-President Clinton signed into law the Telecommunications Act of 1996 (the Act), Pub. L. No. 104-104, 110 Stat. 56, *codified as* 47 U.S.C. §151, *et seq.* The Act's stated purpose is to provide the benefits of competition to United States citizens by opening all telecommunications markets to competition. *See* H. Rep. 104-204, 104th Cong. 2d Sess. 48 *reprinted in* 1996 U.S. Code Cong. and Ad. News 11.

In the aftermath of the passage of the 1996 Act, this Commission adopted rates, terms and conditions for Bell Atlantic - West Virginia, Inc. (“BA-WV”), now Verizon West Virginia Inc., to incorporate into its Statement of Generally Available Terms and Conditions (“SGAT”) through separate Orders dated April 21, 1997, and May 16, 1997. Commission Orders, Case No. 96-1516-T-PC, et al. (April 21, 1997, & May 16, 1997). Because, in part, the Commission-ordered inputs required re-runs of cost models and other work in order to arrive at the full set of SGAT rates, the parties continued to discuss and litigate the issues until the Commission approved the final SGAT two years later on April 16, 1999. Commission Order, Case No. 96-1516-T-PC, et al. (April 16, 1999).

This Commission previously found, in Case No. 96-1516-T-PC, that Verizon WV generally complied with the fourteen-point checklist under Section 271(c)(2)(B) of the Act for “Track B” purposes. *Id.* The Commission found that further proceedings were necessary for the purpose of investigating Verizon WV’s testing and roll-out of its operations support systems (“OSS”), but later canceled those proceedings because of the then-pending OSS work being conducted in New York. Commission Order, Case No. 97-1613-T-PC (November 9, 1998).

Since that time, the Federal Communications Commission (“FCC”) has approved numerous Section 271 applications by former Bell companies – first, in New York, and then in other states across the country – and has substantially refined and further defined the requirements for long distance entry by former Bells such as Verizon.¹ Most recently, the FCC has approved the long distance application of Verizon in Virginia.²

Parallel to the Commission’s consideration of Verizon WV’s Section 271 compliance

¹ See, e.g., Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953 ¶76 (1999) (“*New York Order*”).

² *In the Matter of Application of Verizon Virginia Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Virginia*, WCC Docket No. 02-214, Memorandum Opinion and Order, released October 30, 2002 (“*Virginia Order*”).

in the present proceeding, Verizon WV filed with the Commission a Petition for a Declaratory Ruling seeking approval of Verizon WV's rates for several additional unbundled network elements ("UNEs") – known as the "Gap," "Remand" and "Merger" UNEs – which were not addressed in the SGAT. These additional UNEs were required by the FCC orders following the Supreme Court's remand of the *Local Competition Order*,³ or in connection with the Bell Atlantic/GTE merger,⁴ or were "intended to provide to competitive local exchange carriers (CLECs) an appropriate suite of wholesale telecommunications services over Verizon WV's network." Verizon WV Petition for Declaratory Ruling, Case No. 01-1696-T-PC, at 3. The Commission has addressed these additional UNEs by separate order dated December 18, 2002, in Case No. 01-1696-T-PC.

A. Role of the State Commission

The Act expressly sets forth the role of the respective state commissions in the Section 271 process: "to verify the compliance of the Bell operating company with the requirements of subsection (c) [of Section 271]."⁵ Under the Act, the FCC must "consult" with the state commission of any state that is the subject of a section 271 application.⁶ According to the FCC however, "[b]ecause the Act does not prescribe any standard for [the Federal Communications] Commission consideration of a state commission's verification under section 271(d)(2)(B), the [Federal Communications] Commission has the discretion in each section 271 proceeding to determine the amount of weight to accord the state commission's verification."⁷

This Commission has taken all of the steps that the FCC requires in order for the FCC to accord this Commission's recommendation "substantial weight." *Texas Order* ¶ 11. The Commission has directed "a lengthy, rigorous and open" process in which the Commission

³ See, e.g., Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696, 16 FCC Rcd 1724 (rel. Nov. 5, 1999) (requiring the unbundling of subloops and dark fiber); Fourth Report and Order, *Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 20,912 (rel. Dec. 9, 1999).

⁴ See Memorandum Opinion and Order, *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control*, 15 FCC Rcd 14,032 (rel. June 16, 2000).

⁵ 47 U.S.C. § 271(d)(2)(B).

⁶ 47 U.S.C. § 271(d)(2)(B).

⁷ Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354 ¶ 11 ("Texas Order").

Staff, Consumer Advocate Division and CLECs have participated. *Texas Order* ¶ 11; *New York Order* ¶ 20. However, the FCC has sole authority to approve or disapprove Verizon WV's entry into the in-region interLATA market, and so the Commission's role is to draft a credible, comprehensive, and accurate consultative report to the FCC. *See, e.g., Virginia Order*, at ¶ 12.

In addition, the Commission must also approve Verizon WV's Carrier-to-Carrier ("C2C") Guidelines and performance assurance plan ("PAP"). Although the Commission need only issue a consultative report for purposes of Verizon WV's Section 271 application with the FCC, *see* 47 U.S.C. § 271(d)(2)(B), the C2C Guidelines and PAP require a Commission Order.

While the Commission's consultative role with the FCC in connection with the application by Verizon WV for authority to provide in-region interLATA telecommunications services is delineated by Section 271 of the Act, the Commission is not precluded from considering testimony and evidence proffered in connection with the Section 271 process under its own, independent authority under Chapter 24 of the *W.Va. Code*. In this respect, the *W.Va. Code* provides:

Whenever, under the provisions of [Chapter 24], the Commission shall find any regulations, measurements, practices, acts or services [provided by any public utility subject to its jurisdiction] to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of [Chapter 24], or shall find that any services inadequate, or that any service which is demanded can not be reasonably obtained, the Commission shall determine and declare, and by order fix reasonable measurements, regulations, act, practices or services, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of [Chapter 24], and shall make such other order respecting the same as shall be just and reasonable.

W.Va. Code § 24-2-7(a).

At several points during these proceedings, Verizon WV responded to various CLEC complaints or concerns by indicating that the particular complaint or concern "is not relevant to a proceeding under Section 271". Verizon WV may be correct in asserting that a particular CLEC complaint is not appropriate for consideration, by the FCC, under 271, or for inclusion in the state's Commission's consultative report to the FCC in connection with Section 271. However, this does not mean that the Commission is precluded from taking

appropriate action regarding CLEC complaints about the manner in which Verizon WV is providing services in West Virginia.

As it considers whether Verizon WV has met the requirements of the 14-point check list set forth in Section 271(c)(2)(A), the Commission is mindful of the fact that it can find Verizon WV to be in compliance with the 14-point checklist but nonetheless to be providing unreasonable, inadequate, discriminatory, etc. services to CLECs that warrant corrective action by the Commission.

Moreover, the fact that this is not a general investigation or complaint proceeding does not limit the Commission's jurisdiction. If the Commission finds that there are acts, practices or services being provided to CLECs by Verizon WV that are unreasonable, unjust, or discriminatory, or otherwise inadequate, the Commission is not precluded from taking action simply because it makes that determination in the course of this proceeding. The Commission may assert its jurisdiction and authority under *W. Va. Code* § 24-2-7(a) whenever it obtains evidence of such unreasonable, etc., acts in any type of formal proceeding before the Commission. See Commission Order, *Sheppard v. West Virginia Power*, Case No. 94-0161-E-C (Nov. 1, 1995), at 3.

B. Procedural History of the Present Proceeding

On June 11, 2002, Verizon WV made its "Phase A" Section 271 filing. That filing included a number of declarations and extensive attachments and other materials in support of Verizon WV's contentions that it satisfied the provisions of Section 271(c) of the Act. Verizon WV proposed a procedural schedule with hearings to be held in mid-September 2002.

Petitions for intervention were filed by the Consumer Advocate Division ("CAD"), FiberNet, L.L.C. ("FiberNet"), AT&T Communications of West Virginia, Inc. ("AT&T"), Sprint Communications Company, L.P. ("Sprint") and WorldCom, Inc. ("WorldCom") on June 13, June 14, June 27, July 1, and July 11, 2002, respectively. On June 14, 2002, the United States Department of Justice sent a letter to the Commission requesting a copy of all filings.

On June 14, and July 8, 2002, respectively, FiberNet and the CAD filed their comments on the proposed procedural schedule. FiberNet opposed Verizon WV's procedural schedule, recommended that the Commission significantly extend it, and suggested that the Commission delay any further action until operations support systems ("OSS") testing could be conducted. The CAD proposed a series of workshops as a more effective procedure for this proceeding.

On June 19, and July 15, 2002, respectively, Verizon WV filed Responses to FiberNet's opposition to Verizon WV's proposed procedural schedule and the CAD's comments. Verizon WV asserted, *inter alia*, that the Commission had previously endorsed the common OSS testing for West Virginia, Virginia, Maryland and the District of Columbia, and opposed the CAD's recommendation for workshops.

On July 19, 2002, Verizon WV made its Phase B filing. That filing included additional declarations and extensive materials on Verizon WV's OSS performance, as well as revised Carrier-to-Carrier Guidelines and a proposed PAP.

On August 1, 2002, Gateway Telecom LLC d/b/a StratusWave Communications ("StratusWave") petitioned to intervene.

On August 5, 2002, Commission Staff ("Staff") filed its Initial Joint Staff Memorandum. Staff recommended that the Commission schedule hearings in mid-October, 2002.

On August 7, 2002, Verizon WV and FiberNet filed their respective responses to the Initial Joint Staff Memorandum, urging, respectively, that the Commission adopt a shorter or longer procedural schedule than that recommended by Staff.

On August 8, 2002, AT&T and StratusWave responded to the Initial Joint Staff Memorandum, generally arguing that the Commission should establish a longer procedural schedule than that recommended by Staff.

On August 19, 2002, the Commission entered an Order adopting a Procedural Schedule. The Commission ordered that the CAD chair a minimum of at least three (3) workshops by October 1, 2002; established October 8 and 15, 2002, respectively, for the submission of pre-filed direct and rebuttal testimony; and set a hearing for October 22 and 23, 2002. Further, the Commission set a discovery deadline of September 13, 2002, and the parties promptly thereafter began engaging in discovery.

On August 29, 2002, FiberNet filed a Petition for Reconsideration of the Commission's August 19, 2002, Order arguing that the schedule does not allow an adequate amount of time for it to present its case in a deliberate, meaningful and fair manner. FiberNet proposed an alternate procedural schedule providing for hearings in January, 2003. On September 3, 2002, AT&T filed a Response in support of FiberNet's Petition.

On September 3, 2002, the Commission entered an Order denying the Petition for Reconsideration on the grounds that FiberNet's Petition presented no new information or argument to the Commission.

Beginning on August 4, 2002, and ending on October 1, 2002, the CAD chaired six (6) workshops attend by the various interested parties. The CAD filed extensive interim reports on September 9 (First Interim Report), September 17 (Second Interim Report), October 4 (Corrected Second Interim Report), September 23 (Third Interim Report), September 30 (Fourth Interim Report), October 3 (Fifth Interim Report), and October 4, 2002 (Corrected Fourth Interim Report and Sixth Interim Report). CAD filed a Final Workshop Report on October 2, 2002, summarizing the progress made in the workshops.

On October 3, 2002, AT&T and FiberNet filed a Joint Motion for Continuance of the hearings. AT&T and FiberNet asserted that Verizon WV had proposed rate reductions at the October 1, 2002, workshop, and that they needed additional time to study the proposal. On that same date, AT&T and FiberNet filed a Motion for a Subpoena for the attendance of KPMG Consulting at the hearing in this matter.

On October 7, 2002, Verizon WV, the Commission Staff and StratusWave filed their response to the Motion for a Continuance. Verizon asserted that no additional time was necessary for AT&T or FiberNet to understand its rate reduction proposal, and that the Motion was another attempt to delay its long distance market entry. The Staff supported a continuance of a few weeks, and StratusWave supported the Motion with limited comment.

On October 8, 2002, the Commission entered an Order granting the Motion for a Continuance and Adopting a New Procedural Schedule. The Commission required an additional workshop, re-scheduled the filing dates for direct and rebuttal testimony, and re-scheduled the hearing to November 20-21, 2002.

On October 9, 2002, Verizon WV filed a Motion for Reconsideration of the Commission's October 8, 2002, Order. Verizon WV pointed out that the Commission's re-scheduled hearing dates conflicted with the dates that the District of Columbia Public Service Commission had scheduled for its own Section 271 hearings. Verizon WV also asked the Commission to clarify that its Order did not allow opposing parties to file two successive rounds of rebuttal testimony.

On October 10, 2002, AT&T and FiberNet filed separate responses to Verizon WV's Motion for Reconsideration, suggesting that Verizon WV should approach the District of Columbia Commission in order to work out the scheduling conflict.

On October 11, 2002, the Commission entered an Order Adopting a New Procedural Schedule. The Commission stated that it had not previously been made aware of the District of Columbia Commission's hearing dates and re-scheduled the hearing in this matter to November 6-7, 2002. The Commission required the parties to meet to resolve procedural and other issues no later than October 29, 2002, and required the filing of a final report with the

Commission no later than November 1, 2002. The Commission further required Verizon WV to file its UNE rate proposal no later than October 15, 2002, required the other parties to file direct testimony by October 28, 2002, and required rebuttal testimony, as well as comments on the then-expected FCC Section 271 Order for Virginia, no later than November 4, 2002. The Commission also clarified its prior Order with regard to “successive rounds” of rebuttal testimony.

On October 15 and October 24, 2002, respectively, Staff, the Consumer Advocate Division and Verizon WV filed Joint Stipulations in this proceeding and in Case No. 01-1696-T-PC, under which they jointly recommended that the Commission adopt compromise rates for switching and loop UNEs, and for the Gap/Remand/Merger UNEs.

On October 22, 2002, the Commission granted the motion to intervene of North County Communications Corp. (“North County”). North County’s motion was made at the conclusion of the hearing that took place before the Commission in Case No. 02-0254-T-C, *North County Communications Corp. v. Verizon West Virginia Inc.* The Commission also ordered that it would take administrative notice of the record in Case No. 02-0254-T-C to the extent that it is relevant to the issues pending in this case.

On October 25, 2002, the Commission entered an Order requiring Verizon WV to publish notice of the hearing in this matter, and to file an affidavit of same within ten (10) days of publication. Such affidavit was timely filed with the Commission’s Executive Secretary’s Office.

On October 28, 2002, AT&T, FiberNet, StratusWave, North County and Staff filed direct prepared testimony. On November 4, 2002, Verizon WV, FiberNet and North County filed rebuttal testimony. On that same date, AT&T, FiberNet and Verizon filed a Joint Stipulation regarding KPMG Consulting.

On October 31 and November 1, 2002, the CAD filed its Seventh Interim Workshop Report and its Supplemental Final Workshop Report, respectively. The CAD informed the Commission that the parties had held an additional workshop on October 23, 2002, and reported progress made on procedural issues resulting from a separate conference call among counsel for the interested parties.

On November 1, 2002, the Commission entered an Order on several Motions, regarding the procedures for the upcoming hearing. The Commission, *inter alia*, denied Verizon WV’s motion to substitute another court reporter, ordered an expedited transcript, set guidelines for the hearing, and required proposed Orders to be filed no later than November 26, 2002.

On November 6-8, 2002, the Commission held the hearing in this matter, during which all parties and any interested members of the public were permitted to attend and be heard. Over 30 witnesses appeared, and were subject to cross-examination by the parties and questioning by the Commission.

On November 26 and 27, 2002, Verizon WV, AT&T, FiberNet, North County, StratusWave, CAD, and Staff submitted post hearing filings, including proposed findings of fact and conclusions of law.

On December 13, 2002, the Commission served a letter upon the FCC advising that Verizon WV intended to file for section 271 authority from the FCC. Following a series of workshops and an evidentiary hearing, the Commission stated that it had reviewed and deliberated upon the evidence and determined that Verizon WV complied with the statutory tests contained in the Act. Further, the Commission advised the FCC that a complete consultative report would be forthcoming.

On December 18, 2002, FiberNet asked the Commission to delay issuing a final order, suspend any further communication with the FCC regarding the 271 proceeding and to schedule a hearing, due to delays by Verizon WV in converting existing resale or retail loops to voice grade EEL M-loops, and other alleged anticompetitive acts. On December 26, 2002, Verizon WV opposed FiberNet's motion, arguing that the allegations should be resolved outside the section 271 process.

On December 19, 2002, Verizon WV filed its section 271 application with the FCC.

DISCUSSION

I. THE FOURTEEN-POINT CHECKLIST

Checklist Item 1: Interconnection

Section 271(c)(2)(B)(i) of the Act requires Verizon WV to provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)".

Section 251(c)(2)(B) contains three requirements for the provision of interconnection. First, an incumbent LEC must provide interconnection "at any technically feasible point within the carrier's network." Second, an incumbent LEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself." Finally, the incumbent LEC must provide interconnection "on rates, terms, and conditions that are just, reasonable, and non-discriminatory. . ."

A. Evidence and positions of the parties.

Verizon WV

Verizon WV states that it makes interconnection available at: (1) the line-side of the local switch; (2) the trunk-side of a local switch; (3) the trunk interconnection points for a tandem switch; (4) central office cross-connect points; (5) out-of-band signaling transfer points necessary to exchange traffic at these points and to access call-related databases; and (6) the points of access to unbundled network elements. (Verizon Ex. 2 (Checklist Declaration), ¶ 30). Verizon WV provides interconnection to CLECs through collocation arrangements, through the use of dedicated transport facilities from the carrier's premises, and through other technically feasible forms of interconnection. (Id., ¶ 32). Upon request, Verizon WV states that it makes each type of local interconnection specified by the FCC available at technically feasible points, under interconnection agreements. (Id., ¶¶ 30, 31).

Verizon WV states that CLECs may request interconnection at any other technically feasible point through a Bona Fide Request ("BFR") process. (Id., ¶ 31). Other interconnections provided by Verizon WV include access to 800 Database, Line Information Database ("LIDB"), the Local Number Portability ("LNP") database, the Advanced Intelligent Network ("AIN"), E-911, Directory Assistance, Operator Services, two-way measured-use trunking, and 64 Kbps Clear Channel interconnection trunks, in addition to the traditional 56 Kbps interconnection trunks. (Id., ¶¶ 33-36).

At the end of March 2002, Verizon WV indicated that it had more than 30,700 local interconnection trunks in place with 10 CLECs — more than half of the total number of interconnection trunks that Verizon WV has in its entire local interoffice network. (Id., ¶ 39). During 2001, Verizon WV increased the number of interconnection trunks in service between Verizon WV's network and the networks of CLECs by more than 90 percent, adding approximately 11,600 interconnection trunks. (Id., ¶ 40). Verizon WV expects to expand further the trunk capacity of its switches by an additional 5,700 tandem trunk terminations and about 26,000 end office trunk terminations by the end of 2002. (Id.).

According to Verizon WV, the volume of interconnection traffic exchanged between Verizon WV and CLECs has also increased substantially. (Id., ¶ 41). Between 2000 and 2001, the average number of minutes exchanged on a monthly basis increased from about 7.8 million to 70.6 million. (Id.). For January through March 2002, there were a total of 119 million minutes per month exchanged on average. (Id.).

Despite these increasing volumes, Verizon WV states that it is consistently meeting or improving the provisioning interval targets for interconnection trunks. (Id., ¶ 47 & Attachment 204). In addition, Verizon asserts that the Carrier-to-Carrier ("C2C") data show

that Verizon WV has consistently met the due dates for CLEC interconnection trunks. (Id., ¶ 47; *see also* Verizon Ex. 3 (Verizon’s Measurements Declaration), Attachment 402). Verizon WV also maintains and repairs interconnection trunks in a nondiscriminatory manner by using the same equipment and personnel for CLEC and Verizon WV trunks. This non-discriminatory treatment is confirmed by Verizon WV’s Carrier-to-Carrier performance reports. (Verizon Ex. 2, ¶ 49). In the period from January 2002 through March 2002, the Network Trouble Report Rate for interconnection trunks (MR-2-01) was virtually nonexistent. (Id.; *see also* Verizon Ex. 3, Attachment 402).

Regarding collocation, Verizon WV stated that it offers the same collocation offerings as Verizon Pennsylvania, Verizon Massachusetts and Verizon New York, including multiple collocation options and alternatives. (Verizon Ex. 2, ¶ 61). As of March 2002, CLECs had established 42 collocation arrangements in 26 central offices. (Id., ¶ 73). From February through March 2002, Verizon WV completed 100 percent of CLECs’ new physical collocation arrangements and augments to existing arrangements on time. (Verizon Ex. 9 (Measurements Rebuttal), Attach. 402).

Collocation is available to CLECs under interconnection agreements and the Verizon WV Network Interconnection Services Tariff P.S.C.—W.Va. —No. 218 (“West Virginia Collocation Tariff”), which is filed with and approved by the Commission. (Verizon Ex. 2, ¶ 63). The types of collocation specifically offered by Verizon WV include physical, virtual and several other collocation alternatives. (Id.).

Verizon WV stated that it posts information on the availability of collocation space in its central offices on its web site. (Id. at ¶ 79). When Verizon WV denies a request for physical collocation due to space limitations, Verizon WV provides CLECs with an opportunity to tour such central offices. (Id. at ¶ 80). Additionally, in accordance with FCC and Commission rules, Verizon WV files central office space exhaustion notifications with the Commission, which explain the types of physical collocations present or pending and the reason(s) a CLEC request for physical collocation cannot be accommodated. (Id. at ¶ 81).

FiberNet

FiberNet asserted that Verizon WV fails Checklist Item 1 because it does not provide interconnection services in accordance with law. (FiberNet Ex. 1 (Direct Panel Testimony), pp. 5-6). FiberNet characterized Verizon WV’s use of the Geographically Relevant Interconnection Point or GRIPs interconnection policy as a strategy designed to force CLECs to build facilities to Verizon WV end offices, where they physically interconnect, and then insist that this is the point where Verizon WV’s financial responsibility ends. (Id., pp. 6-7). FiberNet contended that Verizon WV routinely orders transport services over FiberNet’s network to complete and terminate Verizon WV’s originated calls, but refuses to compensate

FiberNet for this service. (Id.). At the same time, Verizon WV insists that FiberNet compensate Verizon WV for the transport of FiberNet originated traffic. (Id.). FiberNet argued that Verizon WV's use of the aforementioned GRIPs interconnection policy is contrary to the basic "originator pays" principle at the core of interconnecting networks under the Act.

FiberNet indicated that the current interconnection agreement under which it operates did not contain GRIPs provisions. (Id., p. 7). Nonetheless, the provisions are contained in Verizon WV's template interconnection agreement and will be an issue when FiberNet attempts to negotiate its successor agreement. (Id.).

AT&T

AT&T cites a recent decision of the FCC for the proposition that neither the Act nor the Commission's rules or decisions sustains the distinction between the Point of Interconnection ("POI") and the Interconnection Point ("IP") that Verizon WV seeks to maintain in its interconnection agreements in West Virginia⁸. (AT&T Ex. 1, (Checklist Declaration) p. 26). AT&T points out that the Act and the FCC's decisions use the terms interconnection point and point of interconnection interchangeably and without such difference, providing instead that CLECs may interconnect at any technically feasible point. (Id.). Nothing in the statute or regulations, creates, supports, or even suggests the critical division Verizon WV is attempting to impose on CLECs through its GRIPs scheme. (Id., p. 27).

Verizon WV's GRIPs proposals directly violate the principle that it is the CLEC, not the incumbent local exchange carrier (ILEC), that gets to choose where to most efficiently interconnect with the ILEC's network and seeks to undermine the network interconnection efficiencies of new entrants. (AT&T Ex. 1, p. 31). Since Verizon WV continues to retain GRIPs provisions in currently effective interconnection agreements and presses GRIPs demands in current interconnection negotiations with CLECs, AT&T opines that Verizon WV fails to satisfy its obligations under Checklist Item 1. (Id.).

Additionally, AT&T asserts that Verizon WV's processes for crediting CLECs for returned collocation space is wholly inadequate. Moreover, Verizon does not take reasonable steps to promote the use of the returned space (which is available at a discounted rate) to collocators seeking new space. Of the 79 collocation arrangements provisioned by Verizon WV through July 2002, CLECs have returned 35 arrangements. (AT&T Ex. 1A (Checklist Declaration - Proprietary), Attachment 2; Verizon Ex. 8B (Checklist Rebuttal - Proprietary),

⁸ See Memorandum Opinion and Order, *In the matter of Petition of WorldCom et al*, CC Docket No. 00-218, (July 17, 2002). (*Virginia Arbitration Order*)

¶ 35). Of the 35 returned collocation arrangements, Verizon has not provided a credit to any vacating collocator. (AT&T Ex. 1A, Attachment 3).

AT&T suggests that Verizon WV should be required to adopt a streamlined process for the return of collocation space and for incoming CLECs to be able to benefit from the discounts available on the returned space. (AT&T Ex.1 pp. 35-36).

North County

In its prefiled testimony, North County restated the problems it encountered in attempting to interconnect with Verizon WV. (North County Ex. 1, (Direct of Todd Lesser), p. 2). These problems prompted North County to file a formal complaint against Verizon WV. (See P.S.C. Case No. 02-0254-T-C, *North County Communications Corp. v. Verizon West Virginia Inc.* “Complaint case”). According to North County, Verizon WV engaged in a wrongful, deliberate, systematic and unlawful effort to deny North County interconnection at technically feasible locations in West Virginia. (Id., p. 4). North County asserted that Verizon WV unreasonably refused to interconnect with North County at the end user loop facilities located at 405 Capitol Street, where interconnection was technically feasible, in violation of Section 251(c)(2)(B) of the Telecom Act. North County asserted that Verizon WV created an unlawful policy of not allowing the sharing of “retail” and “wholesale” networks in the field. (North County Ex. 2 (Direct of Douglas Dawson), p. 6). North County asserted that Verizon WV’s refusal to interconnect delayed North County’s entry into the local exchange market in West Virginia. (Id.).

Staff

Staff, although generally agreeing that Verizon WV has complied with the checklist, expressed concerns regarding North County’s interconnection. In the North County Complaint case, Verizon WV applied an unwritten policy that Verizon will not interconnect at a loop facility -- one of the 6 points where interconnection with the ILEC’s network is deemed “technically feasible” by the FCC. Staff recommended that the Commission adopt the corrective measures proposed by Staff in the Complaint case as a prerequisite to satisfaction of Checklist Item 1.

With regard to collocation, Staff suggests that Verizon WV should be required to timely provide, on the company’s website, information noting the central offices in which collocation arrangements have been returned. The information should be the posted and updated within 10 business days of the return, or reassignment, of collocation arrangements.

CAD

GRIPs does not affect Verizon WV's compliance with this Checklist Item as GRIPs is not required in order to interconnect with Verizon⁹. GRIPs is an issue for negotiation in every interconnection agreement. If parties cannot reach agreement on interconnection issues - including GRIPs or other compensation issues – they may bring those issues to the Commission for arbitration.

Verizon WV Rebuttal

Verizon WV asserted that under applicable law neither the existence of GRIPs in an existing interconnection agreement, nor a request by Verizon WV in an interconnection agreement negotiation that a GRIPs provision be included, constitutes grounds for finding non-compliance with Checklist Item 1. (Verizon WV Ex. 8A (Checklist Rebuttal), p. 5). Moreover, Verizon WV pointed out that neither AT&T nor FiberNet's current interconnection agreements contain GRIPs provisions. (Id., p. 6). Finally, Verizon WV asserted that if either AT&T or FiberNet wished to contest the validity of its GRIPs provisions, the proper forum would be through an arbitration proceeding and not a Section 271 compliance proceeding. (Id., pp. 7-8).

B. Discussion

The issues raised concerning interconnection will be grouped in three categories, (i) GRIPs, (ii) North County Complaint case, and (iii) collocation.

(i) GRIPs

AT&T and FiberNet allege that Verizon WV has failed to demonstrate that it has satisfied its obligations under Checklist Item 1 because of the position Verizon WV has taken on GRIPs.

Under the GRIPs provisions, the parties negotiate one point as the place where their networks will physically interconnect, and another point as the place for making determinations for how the parties will allocate the extra costs of interconnection and transport facilities needed to exchange traffic between the two carriers. GRIPs provisions are included in some interconnection agreements ("ICAs") in West Virginia where the provisions were voluntarily negotiated by the CLEC and Verizon. Many agreements in West Virginia do not have negotiated GRIPs provisions, including FiberNet's and AT&T's current agreements. (See Verizon Ex 8A, ¶ 16).

⁹ *Virginia Order*, ¶173.

In the *Virginia Order*, as in other orders, the FCC found it sufficient to show compliance with this Checklist Item that Verizon “has entered into at least one interconnection agreement in Virginia that does not follow the GRIPs policy.” *Virginia Order* ¶ 173.¹⁰ Because there are agreements in West Virginia that do not contain the GRIPs language, the fact that some agreements include this language is, as the FCC has repeatedly found, irrelevant to the question whether Verizon WV complies with this Checklist Item.¹¹

Parties to interconnection agreements may voluntarily enter into GRIPs agreements, since Section 252(a)(1) of the Act expressly allows parties to agree to interconnection terms “without regard to the standards set forth in § 251”. The Act provides for state commission resolution of disputes that arise out of the terms and conditions of ICAs.¹² If a competing provider opposes Verizon WV's efforts to incorporate GRIPs in an agreement being negotiated, that would be a proper subject for Commission arbitration. Though GRIPs does not equate to checklist noncompliance, the Commission will review individually contested GRIPs provisions upon request of the affected carriers.

(ii) North County Complaint Case

The FCC has repeatedly emphasized that the purpose of a Section 271 proceeding is to determine a Bell Operating Company's overall performance in satisfying its obligations under Section 271. The FCC has stated that it “will not withhold section 271 authorization

¹⁰ See also, *In the Matter of Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, WC Docket 02-67, Memorandum Opinion and Order, released June 24, 2002 (“*New Jersey Order*”) ¶ 155.

¹¹ See *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, released September 19, 2001, at ¶ 100 (“*Pennsylvania Order*”) (explaining that GRIPs — which “distinguish[es] between the physical [point of interconnection] and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities” — “do[es] not represent a violation of our existing rules.”). See also Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, 16 Rcd 6237 ¶ 42 (released January 22, 2001) (“*Kansas/Oklahoma Order*”) ¶ 234 (declining to review similar complaint about analogous SWBT proposal because it was at issue in ongoing arbitration).

¹² 47 U.S.C. §252.

on the basis of isolated instances of alleged unfair dealing or discrimination under the Act.”¹³

North County’s allegations that Verizon WV refused, as a matter of policy, to interconnect with North County at the end user loop facilities located at 405 Capitol Street, where interconnection was technically feasible are important to the Commission. The issues raised by North County will be fully addressed in a forthcoming order in Case No. 02-0254-T-C.

¹³ *Texas Order*, ¶ 222.

Nonetheless, North County's allegations are that of only one CLEC in West Virginia.¹⁴ Relative to the Commission's charge in the instant proceeding, the Commission finds North County's allegations to be a snapshot in time that are not necessarily reflective of Verizon WV's current business practices.

It is also important to note that the Commission has continuing jurisdiction over Verizon WV's interconnection policies, practices and procedures. Any future allegations of unreasonable or discriminatory conduct can be addressed on a case by case basis.

(iii) Collocation

Section 271(c)(2)(B)(i) of the Act requires that a 271 applicant provide interconnection arrangements in accordance with the requirements set forth in Section 251(c)(6). Section 251(c)(6) states that an ILEC, such as Verizon WV, has the "duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier."

AT&T has raised several issues regarding collocation space and argues that Verizon WV should advertise returned collocation space at reduced rates. Verizon WV responded that it already provides information on its website regarding available physical collocation space in its West Virginia central office and that further information, such as central offices in which there is returned collocation space, is not required. Verizon WV agreed that CLECs may favor re-using returned collocation space because it may be cheaper than establishing a new collocation arrangement, and may allow for collocation in Verizon WV's central offices more quickly. (Tr. III, at 272-274). However, Verizon WV's witnesses asserted that requiring the company to advertise the existence and location of returned collocation space should not be required because: (1) it is an administrative burden on Verizon, and (2) the CLECs should be able to get the information easily. (Id.).

Of the 79 collocation arrangements provisioned by Verizon WV through July 2002, CLECs have returned 35 arrangements. (AT&T Ex. 1A, Attachment 2; Verizon Ex. 8B, ¶ 35). By a post hearing submission, Verizon WV provided information regarding the 35 collocation arrangements returned by CLECs to date. (Staff Post Hearing Ex. 1.) The exhibit shows that: (1) 7 CLECs account for the 35 returned arrangements; (2) the vast majority of arrangements (all but 3, in fact) were returned on 5 dates over the span of nearly

¹⁴ As of March 31, 2002, this Commission has approved approximately 80 interconnection agreements. Verizon WV estimates that there are approximately 20 active CLECs in the state. (Verizon Ex. 1A (Declaration of Gale Y. Given), ¶ 7.

a year -- 8 on August 10, 2001, 5 on April 15, 2001, 8 on May 6, 2001, 9 on December 16, 2000, and 2 on March 29, 2001; and (3) the central offices where collocation arrangements have been returned tend to cluster - for example, 5 arrangements were returned in the Charleston Central Office, 3 in the South Charleston Central Office, 2 each in the Huntington and Huntington West Central Offices. (Staff Post Hearing Ex. 1).

Under these circumstances, posting a notation that a particular central office has returned collocation space available should not be a burden on Verizon WV. More importantly, Verizon WV's current practice of not posting any information regarding returned collocation space may explain why only five returned arrangements have been reused in the past three years.

The Commission's authority to require Verizon WV to provide such information was recognized by the FCC:

We decline, however, to adopt a general rule requiring LECs to file reports on the status and planned increase and use of space. *State commissions will determine whether sufficient space is available for physical collocation, and we conclude that they have authority under the 1996 Act to require incumbent LECs to file such reports.*

"First Report and Order," *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325 (Rel. Aug. 8, 1996), at ¶ 585 (emphasis added) (*Local Competition 1st R&O*).

Requiring Verizon WV to provide updated information identifying those central offices where collocation arrangements have been returned therefore is reasonable, does not overly burden Verizon WV's administration, and provides information that CLECs may consider useful in keeping their costs of collocating down while potentially expediting the collocation process. Finally, requiring Verizon WV to provide the information that it has in its possession is consistent with the FCC's observation regarding interconnection -- equally relevant to collocation -- that ILECs "have a duty to make available to requesting carriers general information indicating the location and technical characteristics of [their] network facilities" because that information is in their possession, not the CLECs. *Local Competition 1st R&O*, ¶ 205.

Accordingly, while the Commission concludes that Verizon WV satisfies the requirements of Checklist Item 1 regarding collocation, the Commission shall require Verizon WV to timely provide, on the company's website, information noting the central offices in which collocation arrangements have been returned, and to timely update that information. With regard to "timely," the Commission shall require the posting and updating

of such information within 10 business days of the return, or reassignment, of collocation arrangements.

C. Conclusion

Based upon the foregoing, the Commission concludes that Verizon WV meets the requirements of Checklist Item 1.

Checklist Item 2: Nondiscriminatory Access to Network Elements

Section 271(c)(2)(B)(ii) of the Act requires Verizon WV to offer “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).” Section 251(c)(3) in turn requires the incumbent LEC to “provide, to any requesting telecommunications carrier . . . , nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory” and “in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service.”

The analysis of Checklist Item 2 is organized into the following subsections: (i) Operation Support Systems (OSS), (ii) access to UNEs, and (iii) pricing of network elements.

A. Operation Support Systems (OSS)

OSS refers to the systems, databases, and personnel used by a Bell Operating Company (BOC) to provide services to customers in an accurate and timely manner as well as to ensure the quality of those services.¹⁵ OSS functions, critical to CLECs, include pre-ordering, ordering, provisioning, maintenance and repair, and billing.¹⁶ In addition, OSS encompasses a BOC’s change management process and the technical assistance the BOC offers to CLECs.¹⁷ Moreover, a BOC’s OSS must support the three modes of competitive entry envisioned by the Act, *i.e.*, facilities based, UNE, and resale.¹⁸

¹⁵ *New York Order* at n.12.

¹⁶ *Id.*, ¶ 83.

¹⁷ *Id.*, ¶ 81.

¹⁸ *Id.*, ¶ 85.

The FCC consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.¹⁹ New entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers.²⁰ The FCC has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.²¹

For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.²² For OSS functions that have no retail analogue, the BOC must offer access "sufficient to allow an efficient competitor a meaningful opportunity to compete."²³ In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the FCC will examine, in the first instance, whether specific performance standards exist for those functions.²⁴

The FCC analyzes whether a BOC has met the nondiscrimination standard for each OSS function using a two-step approach. First, the FCC determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."²⁵ The FCC next assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter."²⁶

Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow competing carriers equivalent access to all of the necessary OSS functions.²⁷ Under the second inquiry, the FCC examines performance measurements and other evidence of

¹⁹ *New York Order*, ¶ 83.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*, ¶ 86.

²⁴ *Id.*

²⁵ *Id.* at ¶ 87.

²⁶ *New York Order* at ¶ 88.

²⁷ *Id.* at ¶ 87.

commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.²⁸

1. Evidence and positions of the parties.

Verizon WV

In its OSS Declaration, Verizon WV described the access that it provides to its OSS for pre-ordering, provisioning, maintenance and repair, billing, and CLEC support and training. (Verizon WV Ex. 4 (OSS Declaration), pp. 5-7). Verizon WV reported that during the month of March 2002, 39 competing carriers submitted at least one pre-order transaction in West Virginia and that for that period from January through May 2002, its OSS processed over 97,700 pre-order transactions and over 31,000 order transactions. (Id., p. 11).

Verizon WV submitted that its OSS was the subject of a comprehensive third-party test by KPMG in Virginia under the direction and oversight of the Virginia State Corporation Commission. (Id., p.13). According to Verizon WV, the KPMG test was designed to address all stages of a CLEC's relationship with Verizon, including the initial establishment of the relationship, daily operations, and the ongoing relationship. (Id.; *see also*, Verizon Ex. 4, Attachment 301). Verizon WV noted that KPMG included each of the potential delivery methods a CLEC might use – resale, unbundled network elements, unbundled network element-platforms, and other combinations of unbundled network elements – in its test. (Id.). The KPMG review found an outstanding level of Verizon achievement. (Id., *citing* "KPMG Final Report, Version 2.0 issued April 15, 2002", hereafter (KPMG Final Report)).

Verizon WV further noted that systems, interfaces, documentation, policies and procedures are the same in West Virginia and Virginia. Thus, Verizon WV opined that the results of the Virginia test were directly applicable to West Virginia as well. (Id.).

In order to demonstrate that Verizon's assertions regarding the sameness of its Pre-ordering, Ordering, Provisioning, Maintenance and Repair, Billing, Relationship Management & Infrastructure and Metrics calculations are fairly stated, Verizon engaged PricewaterhouseCoopers LLP ("PwC") to independently examine those assertions. (Id., pp. 11-12). PwC's examination covered the following Verizon Management Assertions:

Verizon's OSS, (specifically, the pre-order, order, provisioning, maintenance and repair, relationship management infrastructure, and billing domains) made available to support wholesale CLEC activity within Maryland, West Virginia

29 Id. at ¶ 89.

and Washington, DC are the same OSS made available to support wholesale CLEC activity within Verizon Virginia and,

Verizon uses the same procedures and underlying systems to calculate performance measures (metrics) related to Verizon's wholesale and retail performance within Maryland, West Virginia and Washington, DC as those procedures and underlying systems used to calculate metrics related to Verizon's wholesale and retail performance within Verizon Virginia.

Based on its independent examination, PwC concluded that Verizon's assertions as stated above were fairly stated, in all material respects, as of March 11, 2002. (Id., at pp. 12-13; *See also*, Verizon Ex. 6 (PwC Sameness Declaration)).

Pre-Ordering:

Verizon WV asserted that its retail representatives and CLEC employees have access to the same pre-ordering information through the same OSS. (Id., p.16). This information includes: (1) customer service records or CSRs, (2) address validation, (3) telephone number selection/reservation, (4) product and service availability, (5) due date availability, (6) loop qualification for ISDN, (7) loop qualification for xDSL, (8) directory listing request, (9) telephone number reservation maintenance, (10) xDSL loop qualification – extended, and (11) loop make up. (Id.). According to Verizon WV, CLECs may obtain access to pre-ordering information through three interfaces: Electronic Data Interexchange (“EDI”), Common Object Request Broker Architecture (“CORBA”), and a Web-based Graphical User Interface (“Web GUI”). (Id., at pp. 18-19). During the month of May 2002, three CLECs used EDI and over 35 CLECs used the Web GUI to submit pre-ordering transactions in West Virginia. Ten CLECs are certified to use CORBA to perform pre-ordering transactions with Verizon, which enables them to use it in West Virginia as well as any former Bell Atlantic state. (Id., p.19).

Ordering:

Verizon WV outlined the steps in its ordering process: (1) the submission by a CLEC of either of a Local Service Request (“LSR”) or an Access Service Request (“ASR”), (2) the reviewing and checking of this request, (3) the routing to appropriate systems which process Verizon WV requests, and (4) the entry of that request into the service order processing system. (Id., p. 26). Verizon WV acknowledges when an order is received and provides CLECs with a notice when the order has entered the service order processor, generally called a Local Service Request Confirmation (“LSRC”), but sometimes referred to as a Firm Order Confirmation (“FOC”) Verizon also provides a reject notifier with an error (“ERR”)

message, a Provisioning Completion Notifier (“PCN”), and a Billing Completion Notifier (“BCN”). (Id.). CLECs may submit resale and UNE LSRs via EDI or Web GUI. Moreover, West Virginia CLECs may use one of two industry standard versions of the Local Service Ordering Guidelines (“LSOG”), i.e., 4 or 5, for each of the ordering interfaces. (Id., pp. 27-28). By the end of November 2001, Verizon WV stated that all CLECs in West Virginia were using LSOG 4 to submit LSRs. (Id., p. 27). Verizon WV stated that in the month of May 2002, Verizon processed over 5,500 LSRs in West Virginia and over 855,300 LSRs in the former Bell Atlantic service area. (Id., p. 29).

Verizon WV defined “flow-through” to be LSRs submitted electronically that go through Verizon WV’s interface and gateway systems to the service order processor without manual intervention, and continue automatically into the provisioning systems. (Id., pp. 29-30). Verizon WV explained that there are several reasons why an LSR would not flow-through. (Id., pp. 30-31). Verizon WV advised that when an LSR fails to flow-through it is either queried back to the CLEC or is processed manually. (Id., p. 31).

Verizon WV presented performance measures concerning flow-through. First, OR-5-01 – “Total Flow-Through” measures the percentage of valid orders that flow-through for a month. Second, OR-5-03 – “Achieved Flow-Through” calculates the percentage of LSRs that are eligible to flow-through that actually flow-through. (Id., pp. 31-32). According to Verizon WV, the total flow-through rate for Resale was 31.83% in January 2002, 41.46% in February, 47.56% in March, 65.16% in April, and 70.92% in May 2002. (Id., p. 31). During this same period, the total flow-through rate for UNE was 37.61%, 39.51%, 38.10%, 36.15%, and 46.95% in the months of January through May 2002, respectively. (Id.). Overall, Verizon WV stated that it flows-through more than 60% of all CLEC orders in West Virginia. (Id.).

Verizon WV maintained that the total flow-through rate for resale in West Virginia in May 2002, was higher than the rates in New York, Massachusetts, Pennsylvania, Rhode Island, Vermont, Maine, and New Jersey at the time of their respective 271 state proceedings. (Id., p. 32). Similarly, Verizon WV maintained that the total flow-through for UNEs was comparable to the UNE flow-through rate in New York, Massachusetts, Pennsylvania, Rhode Island, Vermont, Maine and New Jersey at the time of their respective 271 state proceedings. (Id., p. 32 and Attachment 302). Moreover, Verizon WV asserted that the total flow-through was dependent on (1) the volume and mix of order scenarios and products requested, and (2) the number of orders changed or supplemented after submission. Thus, Verizon WV contended that individual CLEC total flow-through rates vary. (Id., pp. 32-34).

As to achieved flow-through rate, Verizon WV stated that this metric (OR-5-03) was affected by the same factors that affect total flow-through. (Id., at p. 34). KPMG confirmed in its Virginia test that Verizon’s systems are capable of flowing-through the order scenarios

that are designed to flow-through. (Id.; *citing* KPMG Final Report at TVV 3-2, 3-3 and 3-4). In an effort to increase flow-through, Verizon WV analyzes LSR's that do not flow-through to determine if CLEC education or systems enhancements are appropriate. (Id.).

Verizon WV explained that orders requiring manual processing by the National Marketing Center ("NMC") are automatically directed by the system to the appropriate work group based on order type. (Id., p. 35). The NMC representative processes any orders that are not designed to flow-through or that fail to flow-through as the result of an error. (Id.). Additionally, the NMC representative reviews the orders and if a discrepancy or omission is uncovered that requires input from the CLEC, the representative sends a query to the CLEC for clarification or additional information. (Id.).

Verizon WV asserted that it returns confirmations and reject notices to CLECs in West Virginia on a timely basis. (Id., p. 36). Verizon WV's on-time performance results for confirmations and rejects for UNEs for the five-month period January through May, 2002 exceeded 95% overall for UNE orders collectively and across most of the order type subcategories. (Id.; *See also*, Verizon Ex. 2, Attachment 402 and Verizon Ex. 3, Attachment 404). Similarly, Verizon WV's on-time performance for confirmations and rejects for resale from January 2002 through May 2002, exceeded 95% overall for resale orders collectively and across most other order types. (Id.).

Verizon WV indicated that its OSS for CLECs regarding jeopardy notifiers and determining the status of orders parallels the process followed by retail representatives and is the same process approved by the FCC in New York, Massachusetts, Connecticut, Pennsylvania, Vermont, Maine, New Jersey and Rhode Island. (Verizon Ex. 4, p. 38). In addition, Verizon WV affirmed that it provides CLECs with PCNs and BCNs, which notify the CLEC that it has completed all of the service orders associated with the LSR. (Id., p. 42). Verizon WV maintained that performance measures obtained as part of a special study showed that it meets the requirements for timely PCNs and BCNs, even though in several instances it measured longer intervals than required by the Carrier-to-Carrier Guidelines. (Id., p. 44).

Provisioning:

Verizon WV confirmed that the same systems and processes which operate to provision orders for its retail customers and for CLECs in West Virginia operate in Virginia. (Id.). The primary internal Verizon systems that support provisioning functionality in West Virginia are the Service Order Analysis and Control (“SOAC”), Loop Facilities Assignment and Control (“LFACS”), Memory Administration for Recent Change History (“MARCH”), SWITCH, Trunk Inventory Record Keeping System (“TIRKS”) and the Work Force Administration (“WFA”) systems. (Id.). For CLEC orders with no retail analogue, such as orders that include Hot Cuts, specific provisioning processes have been developed, but are supported by the same OSS that support other order types. (Id., p. 46).

Maintenance and Repair:

Verizon WV stated that it provides CLECs two electronic interfaces through which they can access its maintenance and repair OSS – the Web GUI and Electronic Bonding Interface (“EBI”). From January through May 2002, 10 CLECs used the Web GUI, and 1 CLEC used EBI for trouble administration in West Virginia. (Id., pp. 46-47). Verizon WV described that the Web GUI provides CLECs access to the Repair Trouble Administration System (“RETAS”), which permits a CLEC to: (1) test certain services; (2) create trouble tickets; (3) obtain trouble status; (4) modify a trouble ticket; (5) request cancellation of a trouble ticket; (6) request trouble report history; and (7) obtain trouble ticket service recovery for plain old telephone service (POTS). (Id., p. 47).

Verizon WV asserted that all of the primary internal systems it uses to support maintenance and repair functionality for CLECs in West Virginia are used in common for retail and CLEC customers. (Id., p. 48). Verizon WV declared that these are the same OSS functions made available in New York, Massachusetts, Pennsylvania, Connecticut, Vermont, Maine, New Jersey and Rhode Island. (Id.).

Verizon WV stated that for the months of January through May 2002, West Virginia CLECs averaged 239 RETAS maintenance transactions per month. (Id., p. 50). As to performance of its maintenance and repair OSS, Verizon WV disclosed that for the period from January through May 2002, the response times for all M&R transactions were generally better than the standard. (Id., p. 51). The only exceptions were the February trouble status response time which missed the standard by 0.04 seconds on one transaction, the April trouble ticket history response time which missed the standard by 0.50 seconds, and the May test trouble response time which missed the standard by 3.24 seconds. (Id.).

Billing:

Verizon WV affirmed that the billing systems and procedures it uses for CLECs are the same billing systems and procedures it uses for retail customers and for interexchange carriers. (Id., p. 52). Verizon WV described these systems primarily to be expressTRAK, used for retail products, resale, UNE-P, UNE-ports, and UNE-loops, and Carrier Access Billing System (“CABS”), used for access service, IOF, shared transport, and collocation. (Id., pp. 52-53). Additionally, Verizon WV explained that it provides CLECs with two types of billing information. First, Verizon WV provides CLECs with a Daily Usage File (“DUF”), which contains information necessary for the CLEC to bill their own end users. (Id., p. 53). Second, Verizon WV renders a wholesale bill to the CLEC for products and services it sold to the CLEC. (Id., p. 54). In May 2002, Verizon indicated that it produced approximately 150 wholesale expressTRAK bills and more than 70 wholesale CABS bills in West Virginia. (Id.).

Verizon WV submitted that its carrier bills are available to CLECs on paper, CD-ROM, and in an electronic format consistent with Telcordia’s CABS Billing Output Specification Bill Data Tape (“BOS-BDT”). (Id., p. 54). However, Verizon WV indicated that the paper bill has historically been the official bill or “bill of record.” (Id.).

Verizon WV stated that the billing systems and procedures implemented for CLECs in West Virginia are the same systems and procedures for CLECs used by Verizon in Virginia. (Id., p. 55). Moreover, Verizon WV represented that in its Virginia OSS test, KPMG tested and reviewed Verizon WV’s billing procedures, including the accuracy and timeliness of the DUF and carrier bills in a paper format. (Id.). Verizon WV represented that its billing OSS satisfied all 75 KPMG test points. (Id., p. 56, *citing* KPMG Final Report, pp. 367-416).

KPMG’s conclusions regarding Verizon’s billing performance are confirmed by Verizon performance data. (Id.). In each of the data months of January through May 2002, Verizon made more than 97% of usage information available to CLECs within four business days. (Id.; *See also*, Verizon Ex. 2, Attachment 402 and Verizon Ex. 3, Attachment 401.) For the data months of January through May 2002, Verizon reported that it provided 100% of carrier bills within ten business days. (Id., p. 57).

Beginning in January 2002, Verizon implemented changes to improve timeliness of billing claims resolution. (Id.). The results of these efforts have been significant. (Id.). For claims resolved in 2001 for West Virginia, the average time to resolve a claim was approximately 86 days. (Id.). For claims submitted in 2002, the average time to resolve a claim is 33 days. In addition, Verizon has conducted special studies for West Virginia analogous to metrics BI-3-04—% CLEC Billing Claims Acknowledged within 2 Business Days, and BI-3-05—% CLEC Billing Claims Resolved within 28 Calendar Days after Acknowledgment. (Id. pp. 57-58.). For claims submitted after May 1, 2002, Verizon WV

has achieved an acknowledgment rate in May and June of 100% acknowledged in two business days, and a resolution rate in May and June of 100% resolved within 28 calendar days of acknowledgment. (Id., p. 58).

Metrics BI-3-04 and BI-3-05 are included in the Carrier to Carrier Guidelines on an interim basis pending the outcome of a trial of those metrics that is being conducted in New York. (Id.). BI-3-04, which has a performance standard of 95%, was surpassed for the months of January through May, 2002. (Id; *See also*, Verizon Ex. 2, Attachment 402 and Verizon Ex. 3, Attachment 401). BI-3-05, which has a performance standard of 95%, was not met for the months of January through May, 2002. (Id.).

Verizon WV currently provides approximately 32 bills in BOS-BDT format to 20 of the approximately 30 CLECs receiving wholesale bills in West Virginia. (Id., p. 59). CLECs in West Virginia have the option of electing to treat the BOS-BDT as their “bill of record.” (Id.). The bill of record is the official bill that is relied on by both Verizon WV and the CLECs, for payment of amounts due and for submitting claims for disputed amounts. (Id.).

Verizon WV has implemented a BOS-BDT Quality Review and Adjustment Process to ensure that the BOS-BDT bill balances internally and that it matches the paper bill before it is released to a CLEC. (Id.). BOS-BDT bills are provided to CLECs on a timely basis. (Id., p. 60). During the months of January through May 2002, Verizon WV reconciled and transmitted 100% of the BOS-BDT bills to CLECs within 10 business days. (Id.).

Verizon WV engaged PwC to conduct an attestation examination of its assertions regarding the BOS-BDT. (Id., p. 61). PwC conducted two sequential examinations, covering two sets of assertions by Verizon regarding BOS-BDT bills in West Virginia (Id.). PwC’s examinations were performed using actual CLEC bills. (Id.). PwC concluded that the assertions were fairly stated in all material respects. (Id., pp. 61-65. *See also*, Verizon Ex. 5 (PwC BOS-BDT Declaration.)).

Verizon stated that KPMG confirmed the quality of the paper bill, and PwC’s report confirmed the comparability of the paper to the BOS-BDT. (Id., p. 65). Therefore, the quality of the BDT is confirmed. (Id.).

CLEC Support System

In its OSS Declaration, Verizon WV indicated that it had designed and implemented an extensive array of support services for CLECs to use in entering and participating in the local telecommunications market throughout its service areas, including West Virginia. (Id., p. 65). These are the same support mechanisms favorably referenced by the FCC in approving the Section 271 applications in New York and Massachusetts. (Id.).

Verizon WV described the OSS change management process as the same process used across the former Bell Atlantic footprint, and is designed to accommodate changes to its OSS originating from: (1) CLECs, (2) Verizon, (3) emergency changes, (4) standards bodies, and (5) regulatory authorities. (Id., pp. 66-67). The Verizon Wholesale Customer Support organization administers the OSS change management process and works with CLECs to define requirements, prioritize system changes, publish documentation of system changes, provide notice to CLECs, and sponsor workshops on important industry topics. (Id., p. 67).

Verizon WV asserted that it provides extensive information, training and assistance to CLECs in West Virginia and throughout the former Bell Atlantic service area. (Id., p. 75). Verizon WV stated that most of this documentation is available on its wholesale website, including handbooks for resellers and CLECs, and various other technical documents. (Id.). Verizon WV provided that it also offered CLECs training workshops and has developed web-based training courses. (Id., p. 77). Finally, Verizon WV stated that it provided CLECs in West Virginia with the same help desk, or Wholesale Customer Care Center (“WCCC”) that it provides to CLECs throughout the former Bell Atlantic service area. (Id., p. 78). Verizon WV described WCCC as a single point of contact for all CLEC questions concerning strategic notifiers, reports of systems issues, and timely notification to the CLEC of system events. (Id.).

FiberNet

FiberNet asserted that the KPMG test of Verizon Virginia’s OSS was not designed to correct problems identified within the OSS. (FiberNet Ex. 1, p. 47). FiberNet stated that as it understood KPMG’s role, if KPMG found system flaws, when the results were less than acceptable, it could not report that the system was broken, nor could it recommend that changes be made to the system. (Id.). Instead, FiberNet maintained that if the results were not acceptable, KPMG could only essentially say “do better.” (Id.).

Second, FiberNet presented a summary list of OSS problems that it has experienced in using Verizon WV’s OSS. Among other things, these included: (1) Web GUI related difficulties, (2) missing information on Customer Service Records, (3) incomplete Firm Order Confirmations (FOC), (4) endless escalations of OSS related problems, (5) lack of coordination among various wholesale departments, (6) missing ALI codes, (7) premature disconnections, and (8) problems ordering new services. (Id., pp. 52-56).

FiberNet explained that the Web GUI used to place orders often operates too slowly to be used. (Id., p. 52). FiberNet contended that this occurs on a daily basis usually around 3 p.m. EST. (Id.). FiberNet noted that on October 14, 2002, the Web GUI went down completely for most of the day thereby preventing it from placing orders with Verizon WV.

(Id.). FiberNet also noted that it encountered problems when Verizon WV recently changed the Web GUI Internet address, and it could not access the Web GUI via this new Internet address. (Id.).

FiberNet contended that when it receives FOCs from Verizon WV, the FOCs are often missing critical pieces of information. Since FiberNet must rely upon these FOCs for verification of customer orders, if the FOCs do not contain all of the necessary information, FiberNet must call the National Market Center or NMC in an effort to properly verify its orders. (Id., p. 57).

FiberNet stated that it must routinely escalate a large number of issues related to the functioning of Verizon WV's OSS. (Id.). According to FiberNet, these escalations arise for a number of reasons and include: (1) orders being stuck in acknowledgment, (2) "provisioned complete, no query" orders which are listed by Verizon WV as complete but have not been released to FiberNet, (3) orders generating ESOI or Error Service Order Input, which indicates a problem between different wholesale groups within Verizon, and (4) orders generating false or bogus queries. (Id., pp. 57-58).

FiberNet maintained that it must frequently contact different organizations within Verizon WV's wholesale bureaucracy in order to resolve a particular problem. (Id., p. 58). Although instances evidencing this lack of coordination are not tracked, FiberNet nonetheless asserted that it happens frequently and has unfortunately become "an accepted part of dealing with Verizon WV on ordering and provisioning matters." (Id.).

FiberNet contended that missing ALI codes, which must be supplied by Verizon WV in order to identify access lines for directory listing purposes, creates significant problems for FiberNet in placing orders. Specifically, FiberNet stated that orders are rejected on account of missing ALI codes, and when this occurs, FiberNet must request that Verizon WV supply the missing ALI code so that the order can be successfully completed. (Id., pp. 58-59).

FiberNet also contended that before one of its customers is ready to cut over to FiberNet's service, Verizon WV sometimes unexpectedly disconnects the customer. (Id., p. 59). FiberNet asserted that these "premature disconnections" by Verizon WV cause enormous disruption for FiberNet and the affected customer. (Id.).

FiberNet also asserted that it has a difficult time placing orders with Verizon WV for new service offerings. (Id.). Examples of these include EELs, OC-3s, ATM ports, T-1 multiplexers, and the M-Loop. For each of these examples, FiberNet stated that it experienced delays in being able to provide service to its end user customer. (Id.).

Consequently, FiberNet maintained that it oftentimes takes months, not days, to get orders for these types of new service offerings processed by Verizon WV. (Id.).

FiberNet further stated that it has experienced problems in successfully opening trouble tickets with Verizon WV on OSS related difficulties. (Id., p. 60). In this regard, FiberNet indicated that it had been advised by Verizon WV to begin opening trouble tickets with the WCCC when it experienced these difficulties. (Id.). However, FiberNet stated that it was only able to successfully open trouble tickets with Verizon WV less than 20% of the time. (Id., p. 61).

FiberNet presented testimony concerning billing problems it experiences with Verizon WV. As an example, FiberNet stated that in many cases Verizon WV has granted FiberNet's disputes regarding certain issues but continues to bill the items incorrectly, forcing FiberNet to dispute the same issues month after month. (FiberNet Ex. 5, (Gregory Nichols - Direct), p. 3). FiberNet further stated that Verizon WV will often continue billing for service to an end user after that end user has been disconnected, frequently for up to five or seven business days after disconnection. (Id., pp. 3-4).

FiberNet has also experienced numerous instances in which disputes are submitted to Verizon WV, but Verizon WV fails to assign a claim number. FiberNet testified that it has had to submit approximately 172 separate billing disputes to Verizon WV on several occasions because Verizon WV claimed to have no record of the disputes having been submitted in the first place. (Id., p. 4). FiberNet further stated that sometimes claim numbers are indeed assigned, but disputes are still not resolved in a timely manner or in some cases, they are not resolved at all. In other cases, disputes are resolved in FiberNet's favor, but Verizon WV fails to credit FiberNet's account accordingly. (Id., p. 4).

FiberNet testified that it has approximately \$2.4 million in disputed billings with Verizon WV, covering a wide area of topics including EEL conversions, UNE bills and resale and collocation billing. Some of the individual items associated with these disputed amounts have been unresolved for more than nine months. (Id., p. 5).

FiberNet testified that Verizon WV has not been responsive to FiberNet's requests for billing adjustments. However, as a result of the workshops held in this matter Verizon WV has focused more attention on its billing disputes. FiberNet stated that at the October 23, 2002, workshop, Verizon WV represented that it had in fact issued approximately \$1.2 million billing dispute credits to FiberNet; however, as of the date of filing its testimony, FiberNet, despite repeated requests, had not been provided information from Verizon detailing the bill credits. (Id.).

FiberNet has found that issues and dollar amounts being discussed with the Verizon WV dispute resolution personnel are apparently not being communicated to Verizon WV's billing and collections personnel. As a result, while a particular billing dispute is being addressed with the dispute resolution arm of Verizon WV, FiberNet continues to receive bills from Verizon WV containing these same disputed charges. FiberNet has received letters from Verizon WV's collections department in which Verizon WV threatens to cut off the provision of wholesale services to FiberNet on a prospective basis due to perceived outstanding account balances directly associated with these billing disputes.²⁹ (Id., p. 6).

FiberNet asserted that it has had to hire additional personnel in order to audit, evaluate and oftentimes correct Verizon WV billing inaccuracies. In addition, FiberNet asserted that it must spend extra time and money with its outside auditors explaining these disputes and negotiating how they will be captured and explained in the auditors' financial reports. (Id., p. 9).

FiberNet complained that there are no performance metrics associated with billing accuracy, which take into consideration the validity of the charges, or the timeliness of the dispute resolution process which are both significant problems for FiberNet. (Id., p. 11).

FiberNet indicated that Verizon WV now transmits some bills electronically in the BOS-BDT format, rather than paper bills. However, it has only been several months since Verizon WV allowed CLECs the option of selecting the BOS-BDT version of the wholesale bill to be the "official bill of record." (Id., p. 12). Thus, FiberNet has still had to contend with the voluminous paper bills which cannot be readily audited or validated. (Id.). FiberNet has had extensive problems with Verizon in obtaining assistance to access and read the electronic bills and has found Verizon to be difficult and unhelpful. (Id., p. 13).

FiberNet further testified that it has persistently asked Verizon WV for a mapping of the "ordering" codes to the "billing" codes which would allow FiberNet to understand and compare the charges on the bill to the products and services it has ordered. FiberNet has asked Verizon to provide (a) descriptions of each element ordered; (b) the Universal Service Order Code(s) ("USOCs") that correlate to the particular UNE description; and (c) the Network Channel and Channel Interface ("NC/NCI") Codes, secondary codes and specification codes that are associated with the correlated UNE description and USOC(s). (Id., p. 15). FiberNet states that Verizon WV has not provided the requested information, or adequately addressed FiberNet's concerns.

FiberNet also represented that Verizon WV has substandard billing practices, including, but not limited to, back billing, inaccuracies and manual processes. FiberNet

²⁹ This process may be referred to as the "embargo" or "automated embargo" process.

stated that Verizon WV has back billed FiberNet in some instances for charges that are 2 years old. FiberNet further stated that Verizon WV manually places charges on FiberNet's bills and then provides a spreadsheet as support for these charges, a method that is excessively burdensome for FiberNet and only serves to prolong an already lengthy and unreasonable claims and dispute resolution process. FiberNet testified that the "resolution of the majority of disputes extend well beyond the target 30 day window and requires numerous telephone calls and/or e-mails in order to resolve even the most basic of claims." (Id., p. 17).

FiberNet discussed the fact that the KPMG test in Virginia did not include testing of electronic bills, and did not examine billing disputes, queries or instances of back billing. FiberNet testified "KPMG's limited evaluation of Verizon's billing procedures and bills did not properly reflect real world CLEC's experiences with Verizon's various billing processes and procedures, and are certainly not indicative of FiberNet's past experiences in trying to maneuver through the morass otherwise known as the Verizon billing and dispute resolution processes." (Id., p. 15; *See also* FiberNet Ex. 1, pp. 50-51).

FiberNet also testified that double billing is a problem that has afflicted its customers since January 2000. (FiberNet Ex.1, p. 73). FiberNet stated that although in some instances the double billing problem has gotten better, it often takes several attempts to get double billing problems successfully cleared. FiberNet also stated that once the proper adjustments to the customer's Verizon WV bill are finally made, they are manual adjustments that appear on the customer's bill as a "miscellaneous" credit, and the customer does not know if the credit being received relates to a double billing problem or to some other problem. (Id.).

FiberNet testified that through September of the year 2002, FiberNet has received approximately 44 complaints of Verizon WV double billing. (Id., pp. 77-78). FiberNet is devoting resources from its customer care, sales support, billing, and other staff to resolve the double billing problems created by Verizon WV, and yet is facing repeat problems caused by double billing of customers even after FiberNet has reported the problem to Verizon WV with respect to a particular customer. (Id.).

AT&T

In its OSS Declaration, AT&T took issue with a number of items regarding Verizon WV's OSS. AT&T's issues included (1) the limited scope of the KPMG test, (2) deficiencies in the processes related to order flow-through, (3) failure of Verizon WV's OSS to reflect dark fiber ordering reservations and (4) deficiencies in the OSS processes related to EELs.

AT&T opined that these deficiencies demonstrated that Verizon WV failed to satisfy Checklist Item 2. (AT&T Ex. 2, (OSS Declaration) p. 1).

AT&T asserted that the results of the KPMG test in Virginia did not square with the results experienced by the CLECs in West Virginia. According to AT&T, actual performance data on a limited number of CLEC orders did not provide support for Verizon WV's claim of nondiscriminatory performance. (Id., p. 10). In this regard, AT&T argued that the KPMG test was no substitute for real world experiences. (Id.). Without actual commercial usage, AT&T asserted that there was no assurance that the KPMG test gave an accurate picture of the OSS. (Id.).

AT&T also asserted that Verizon WV's flow-through performance was sub-standard. (Id., at p. 35). AT&T opined that orders must flow-through at a high proportion if there is to be mass-market entry in West Virginia. (Id.). AT&T stated that Verizon WV's flow-through performance does not satisfy Checklist Item 2 so long as it does not meet the 95% standard for achieved flow-through of UNE orders in metric OR-5-03, or the Special Provision standard of 80% for total flow-through in metric OR-5-01. (Id., at p. 36). Based on May 2002 through July 2002 Carrier-to-Carrier data, AT&T stated that Verizon WV's flow-through performance reports showed that only between 29% and 47% of total UNE orders flow-through – with the trend decidedly in the direction of poorer performance. (Id., at pp. 36-37). According to AT&T, the July 2002 rate of 28.95% is far below the Special Provision metrics UNE standard of 80%, and stands in marked contrast to New York's flow-through rate for the same month of almost 93% of total UNE orders. (Id., p. 37).

Similarly, AT&T noted that Verizon WV's achieved flow-through rates for UNEs as measured by metric OR-5-03-3000, measuring flow-through of orders that are supposed to flow-through, is also sub-standard. (Id.). The standard is 95%, which, AT&T pointed out, Verizon WV has consistently failed to meet. In May 2002, for example, AT&T stated that Verizon WV flowed-through 79.36% of UNE orders that were supposed to flow-through. In June 2002, AT&T stated that this rate decreased to 71.97%, and decreased even further to just 53.47% in July 2002. (AT&T Ex. 2, p. 37). By contrast, AT&T stated that in New York, Verizon flowed-through 98.9% of UNE orders that were supposed to flow-through in July 2002. (Id.).

AT&T asserted that there were no extenuating circumstances that Verizon WV could rely upon to explain away its flow-through problems in West Virginia. (Id., p. 38). More disturbingly, however, AT&T pointed out that Verizon WV's sub-standard flow-through performance was occurring with relatively small order volumes. (Id.). Furthermore, AT&T stated that there was no credible evidence to suggest that Verizon WV would be able to flow-through orders at commercially significant volumes. (Id.). In this regard, AT&T noted that KPMG did not test the flow-through capability of Verizon WV's back-end OSS during the volume and stress tests in Virginia because these back-end systems were “inside a ‘black box’ for KPMG’s purposes.” (Id. pp. 38-39).

AT&T testified that KPMG's test of Verizon's OSS was limited in scope and did not test numerous functions including electronic billing, and billing claims, escalations, and the posting of billing credits. (Id., p. 13). AT&T points out several of Verizon's "billing blunders", including disputed bills with FiberNet and Verizon's erroneous transmission of over 5,600 pages of AT&T's Customer Service Records to another CLEC. (Id., pp. 16-17). AT&T also notes that due to the method in which KPMG tested Verizon VA's billing system, it did not "observe or test Verizon's billings claims process for timeliness, accuracy, completeness or efficiency" nor did it "experience the difficulties that CLECs have documented in pursuing resolution of billing claims." (Id., pp. 27-28).

StratusWave

StratusWave testified that the difficulties it has experienced with Verizon WV with conversions of special access facilities to UNEs has also caused billing difficulties because as facilities are converted, StratusWave would not receive proper bills. (StratusWave Ex. 1, p. 6). StratusWave stated that its exercise of reviewing and recalculating the bills "created a significant administrative burden on our staff and left billing matters up in the air for months on end." (Id.). StratusWave stated that Verizon WV said its billing department could not process StratusWave's changes for 6 months, thus causing StratusWave to submit a billing claim every month. (Id., at p. 7). Additionally, StratusWave represented that Verizon WV threatened to cut off StratusWave's ability to add lines unless StratusWave paid the bills and waited for the credits. (Id., p. 7).

Staff

Staff expressed concern about FiberNet's claims that its attempts to open trouble tickets were rejected by Verizon WV. (Staff Ex. 1, p. 5). Staff believed that there were more appropriate ways to deal with problematic trouble tickets, such as requiring the tickets to be opened and indicating they were resolved if the ticket should have been opened elsewhere. (Id., at p. 6). Staff further opined that a trouble ticket could be opened and transferred to the appropriate Verizon department for resolution. (Id.).

Staff also expressed concern that CLECs often did not know which of the many CLEC support organizations (CSOs) they should work with³⁰. (Id., at 6-7). Staff noted that confusion on the part of the CLECs and the representatives of the CSOs was an impediment to speedy, reliable and complete servicing of CLEC needs. (Id., at 7). However, Staff was

³⁰ Staff identified the following Verizon CSOs: National Market Center (NMC) (ordering activities); Wholesale Customer Care Center (WCCC) (systems matters); Wholesale Billing Claims Center (WBCC) (billing issues); Regional CLEC Coordination Center (RCCC) (provisioning matters); Regional CLEC Maintenance Center (RCMC) (maintenance and repair); Collocation Care Center (CCC) (real estate problems); Billing & Collections Operations Center (B&COC) (billing matters).

“cautiously optimistic” based upon Verizon’s responsiveness during the workshop process that Verizon is willing to continue to improve its interaction with CLECs. (Id., at p. 9).

Staff opined that due to the complaints raised by FiberNet and StratusWave regarding their inability to resolve disputed billing, and the potential for billing disputes to serve as a basis for embargoing a CLEC, Verizon should be required to include metric BI-3-05 (the percentage of CLEC billing claims resolved within 28 calendar days after acknowledgment) within the critical measures included in Verizon WV’s proposed PAP.

Staff also recommended that Verizon’s embargo process be the subject of additional discussion as part of the West Virginia Working Group that Staff suggests be established in this proceeding or in the context of a general investigation. Until then, Staff indicated that CLECs can file formal complaints, including requests for interim relief in disputed embargo situations.

CAD

The workshop process pointed out clearly that there was widespread confusion among West Virginia CLECs concerning Verizon WV’s wholesale OSS procedures. There are no Verizon WV wholesale representatives in West Virginia who could work with CLECs. As a result of the workshop process, Verizon WV agreed to set up quarterly meetings in West Virginia with West Virginia CLECs to discuss issues of common concern. (Joint Ex. 1, Final Report on Workshops, p. 3; Verizon Ex. 12, ¶ 4.c.).

Although the record reveals numerous problems with Verizon WV’s billing system, the record also reveals that Verizon WV has taken steps to correct these problems. As part of the workshop process, Verizon WV and FiberNet have begun a process to identify, categorize and resolve these disputes. (Tr. Vol. 2, p. 199; Verizon Ex. 10A, (OSS Rebuttal Declaration - Public), pp. 73-74). Even with a perfect system, billing disputes will still occur. CLECs and Verizon WV will continue to have recourse to the Commission for arbitration of any unresolved billing disputes.

Verizon WV had considerable trouble with double billing, not only in West Virginia, but throughout the Verizon WV service territory. Verizon WV testified that since its double billing team was instituted, the instances of double billing have dropped in West Virginia. (Verizon Ex. 10A, pp. 65-66; Tr. Vol. II, p. 208). This was confirmed by FiberNet witness Nichols, who testified that while double billing has not disappeared, it has gotten better over the past six months. (Tr. Vol. II, pp. 195-196). In Virginia, the FCC found that the occurrences of double billing problems did not undercut Verizon’s checklist compliance. (*Virginia Order*, ¶ 48). CAD recommended that the same finding should be made in West

Virginia. CAD noted that if double billing problems start to rise again, CLECs have the ability to bring this issue to the Commission.

With regard to Verizon WV's automated embargo process, CAD notes that Verizon WV has offered assurances that no CLEC that is contesting a bill through the escalation process will be placed on embargo. Moreover, the embargo is not automatic, in that several notices will be sent to the CLEC before any embargo is imposed. CAD recommended that the Commission should make very clear that it will not tolerate any unwarranted imposition of the Automated Embargo System as a means of bringing pressure on CLECs involved in legitimate billing disputes with Verizon.

Verizon WV Rebuttal

In its OSS Rebuttal Declaration, Verizon WV responded to the various OSS claims presented by the CLECs. Verizon WV stated that it is providing CLECs with nondiscriminatory access to its OSS – a conclusion that is supported both by commercial usage in West Virginia and by the comprehensive testing of the Verizon OSS that supports West Virginia. (Verizon Ex. 10A, p. 4). In addition to the KPMG test, Verizon WV asserted that its OSS is in commercial use today in West Virginia, and thus, no commercial usage period was necessary. (Id., p. 5). Verizon WV affirmed that KPMG's Virginia test was substantially similar to tests in New York, Massachusetts, Pennsylvania and New Jersey and argued that the FCC, in its *Virginia Order*, had concluded that this prior testing constituted persuasive evidence of Verizon's OSS readiness. (Id. p. 19).

Regarding FiberNet's complaints about the Web GUI, Verizon WV asserted that the Web GUI, EDI and CORBA interfaces were consistently available more than the 99.50% standard from June through September 2002. (Id.). Verizon WV did acknowledge that in general, the largest volume of activity processed by its back-end systems occurred between 2 pm and 3:30 pm EST, Monday through Friday. (Id., at pp. 19-20). Transactions submitted by CLECs or by Verizon's retail representatives may take slightly longer to process during that time period. (Id., p. 20; Tr. Vol. 1, pp. 173-174).

With respect to AT&T's claims regarding order flow-through, Verizon WV stated that the FCC has not set a minimum level of order flow-through for Section 271 approval. (Id., p. 24). Verizon WV argued that AT&T's claims had been repeatedly rejected by other state commissions and the FCC. (Id.). Moreover, Verizon WV stated that it had established a substantial record of timely and accurate order processing, whether these orders were handled mechanically or manually, and that its systems had clearly been scaled to meet CLEC demand. (Id., p. 25). Moreover, Verizon WV noted that AT&T has provided no evidence of any actual harm in Verizon's handling of these orders. (Id.). The C2C reports show that

West Virginia orders are being processed timely and accurately. (Id., at pp. 25-26 and pp. 33-34.).

Regarding FiberNet's claims of missing information on FOCs and about Verizon WV's ability to "restart the clock" on the time interval for provisioning service by rejecting a CLEC order, Verizon WV again asserts that FiberNet's claims are without merit and lacks the necessary data to support them. (Verizon WV Ex. 10A, pp. 29-30). In support of its position, Verizon WV noted that KPMG examined 376 order confirmations and found that the fields required by the business rules were present and the data populated correctly. (Id., at p. 30, *citing* KPMG Final Report, p. 144, TVV1-5-3).

With regard to billing issues, Verizon WV sets forth the results of several billing metrics concerning the timeliness of providing bills. (Id., at p. 63). Verizon WV also proclaims that it exceeds the standard for two billing metrics measuring Verizon WV's timeliness in acknowledging and resolving claims. (Id., at pp. 63-64). Verizon WV states that it has implemented procedures to address double billing including the establishment of the Double Billing Team to address complaints. (Id., at pp. 66-68). Since the institution of the double Billing Team, the number of double billing complaints has decreased. (Id., at pp. 66-67).

In response to CLEC issues concerning manual billing of new products, Verizon WV stated that due to regulatory action it often is required to begin implementation of a service before it is able to have the billing software ready. (Id., at pp. 69-70). Verizon WV also claimed that detailed product descriptions to compare with bill charges are always available to CLECs on its website. (Id., at pp. 70-71). Verizon WV asserts that it resolves billing claims in a timely manner. (Id., para. 152). Verizon WV also maintains that the BOS-BDT is an industry wide standard for carriers to exchange billing information electronically. (Id., at p. 78). It is the CLEC's responsibility to obtain appropriate software and documentation in order to process the BOS-BDT formatted bills. (Id.).

2. Discussion

a. Applicability of KPMG Testing

Much controversy was generated during this proceeding concerning the lack of third-party testing of Verizon's OSS in West Virginia. The OSS in Virginia were the subject of an extensive third-party test by KPMG that was performed under the direction and supervision of the Virginia State Corporation Commission. (Verizon Ex. 4 ¶¶ 30-31).

Verizon proposed that the results of KPMG's test of its OSS in Virginia be used to validate its OSS in West Virginia.

Virtually all of the CLECs in West Virginia objected to this proposal and demanded that a separate third-party test be conducted in West Virginia, or that the KPMG witnesses from Virginia be made available for cross-examination in West Virginia. A settlement was finally reached whereby transcripts of cross-examination of KPMG witnesses were admitted into the record in West Virginia.

The KPMG testing analyzed the five functional OSS domains and demonstrates that Verizon WV's OSS provide CLECs with nondiscriminatory access to these processes needed to provide service to end user customers. We agree with the FCC, which recently concluded that this very test was "broad and objective" and that it "provides meaningful evidence that is relevant" to an analysis of Verizon WV's OSS. *Virginia Order* ¶ 27.

Third-party tests have not been performed in every state. Usually one third-party test of each distinct OSS system suffices for all states sharing that system. Moreover, Verizon WV's OSS in Virginia has been found compliant by the FCC, and KPMG's test of the Verizon's OSS in Virginia has been found to be adequate. (*Virginia Order*, ¶ 27). Most importantly, actual experience of West Virginia CLECs with Verizon WV's OSS on a daily basis shows that it performs in an adequate manner. Thus, the only issue remaining is whether the OSS system approved by the FCC in Virginia is the same as the one used in West Virginia.

b. PricewaterhouseCoopers Attestation of Sameness

The FCC specifically did not address the issue of whether Virginia and West Virginia share the same OSS. (*Virginia Order*, fn. 61). To verify the sameness of the OSS, Verizon WV submitted the attestations of several PricewaterhouseCoopers witnesses. (Verizon Ex. 6). The FCC has relied on these "sameness" attestations in other states.³¹ No other party submitted contrary evidence contesting the sameness of the Virginia and West Virginia OSS. Thus, the Commission concludes that the operation support systems in the two states are the same.

c. Access to OSS

³¹ See *In the Matter of Application by Verizon New England and Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*, WC Docket 02-157, Memorandum Opinion and Order, released September 25, 2002 ("New Hampshire/Delaware Order") ¶¶ 97-98 (relying on similar PwC evaluation in finding that Verizon's OSS in New Hampshire and Delaware are the same as its OSS in Massachusetts and Delaware, respectively).

In approving Verizon's application in Virginia, the FCC found that the OSS in use in West Virginia satisfy the requirements of the Act. *See Virginia Order* ¶ 22. Furthermore, some portions of these OSS have been extensively reviewed and approved by other state commissions and the FCC. Perhaps the most notable example are the interfaces and gateway systems in use in West Virginia. These systems, which are common across the former Bell Atlantic service areas have been reviewed and approved by state commissions and the FCC on eleven separate occasions. *See, e.g., Virginia Order* ¶ 22; *New Hampshire/Delaware Order* ¶ 95.

These OSS are being used successfully and extensively by CLECs today. It is essentially undisputed that over 40 CLECs are using the OSS in their commercial operations in West Virginia. There are 10 CLECs using application-to-application interfaces to obtain access to these OSS, while these and others also use the access provided by Verizon's Web-GUI ("Graphic User Interface"). In the month of September 2002, alone, these OSS supported more than 20,500 pre-order transactions, and more than 5,000 ordering transactions in West Virginia. Similar volumes have been sustained throughout the past year. These systems have processed over 70,000 local service requests ("LSRs") or orders in West Virginia from October 2001 to September 2002 and more than 245,000 pre-order transactions in West Virginia during the same period.³²

³² Verizon Ex 10A, ¶ 10.

Pre-Ordering: Verizon WV has demonstrated that the pre-ordering interfaces, gateway systems and underlying OSS in West Virginia are identical to those in Virginia.³³

The FCC has reviewed and approved these functions. *Virginia Order* ¶¶ 28. FiberNet complains that the speed of one of Verizon WV's interfaces, the Web GUI, adversely impacts the pre-ordering process; FiberNet also contends that some customer service records are missing information.³⁴ The instances that FiberNet has raised appear to be isolated incidents that do not warrant a finding of non-compliance.

We note that Verizon is providing pre-ordering functions to CLECs in significant volumes: During the year 2001, for example, Verizon processed more than 29.2 million pre-order transactions throughout the former Bell Atlantic service areas, with more than 228,000 of these in West Virginia.³⁵ Equally important, Verizon has consistently met the standards for the metrics that track pre-order activity.³⁶ For all of these reasons, we conclude that Verizon WV has demonstrated that it provides nondiscriminatory access to its pre-ordering functions.

Ordering: The ordering interfaces, gateway systems and underlying OSS that CLECs use in West Virginia are identical to those used in Virginia; these ordering processes have recently been reviewed and approved by the FCC. And while AT&T criticizes the order flow-through rate in West Virginia,³⁷ we note that the FCC has emphasized that flow-through rates are not a "conclusive measure of nondiscriminatory access to ordering functions," but rather "one indicium among many of the performance of Verizon's OSS." *Pennsylvania Order* ¶ 48. Furthermore, the order flow-through rates are relatively high. In September 2002, Verizon WV's overall order flow-through rate was over 60%, a rate of order flow-through higher than the overall flow-through rate in New York, Massachusetts, Pennsylvania, Vermont, New Jersey, and Maine at the time those states were concluding their section 271 reviews.³⁸

No party has come forward with meaningful evidence that refutes Verizon WV's showing regarding its ordering OSS. The Commission further notes that in reviewing and

³³ Verizon Ex. 4, ¶ 36.

³⁴ FiberNet Ex. 1, p. 52-55.

³⁵ Verizon Ex. 4, ¶ 49.

³⁶ *Id.*, ¶ 52.

³⁷ AT&T Exhibit 2, ¶¶ 62-71.

³⁸ Verizon Ex 10A, ¶ 46.

approving Verizon’s ordering functions that are in use in West Virginia, the FCC did not even address this domain in detail, since it was one of the OSS elements about which “there is little or no dispute” regarding whether Verizon satisfied its nondiscrimination requirements. *Virginia Order* ¶ 24. We therefore conclude that Verizon WV has demonstrated that it provides nondiscriminatory access to its ordering functions.

Provisioning: The Verizon WV provisioning systems and processes for CLECs in West Virginia are the same systems and processes used in Virginia. There are no separate provisioning interfaces, since the information required for provisioning is generally obtained from the CLEC at the time the CLEC submits the order.³⁹ No party disputes Verizon WV’s compliance with its provisioning obligations. The Commission further notes that in reviewing and approving Verizon’s provisioning functions, the FCC did not even address this domain in detail, since it was one of the OSS elements about which “there is little or no dispute” regarding whether Verizon satisfied its nondiscrimination requirements.⁴⁰ No party challenges Verizon WV’s showing. We conclude that Verizon WV has demonstrated that it provides nondiscriminatory access to its provisioning functions.

Maintenance and Repair: The Verizon WV maintenance and repair systems and processes for CLEC orders in West Virginia are the same systems and procedures used in Virginia. No party disputes Verizon WV’s compliance with this OSS domain, and we conclude that Verizon WV has demonstrated that it provides nondiscriminatory access to its maintenance and repair functions.

Billing: To meet the requirement of non-discriminatory access to its billing OSS functions, the FCC has stated that “a BOC must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers’ customers in substantially the same time and manner that a BOC provides such information to itself, and with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.”⁴¹ The evidence shows that Verizon WV meets these requirements by providing service usage data and wholesale bills that are complete, accurate and timely.⁴²

³⁹ Verizon Ex. 4, ¶ 98.

⁴⁰ *Virginia Order* ¶ 24.

⁴¹ *Virginia Order*, Appendix C, ¶ 39.

⁴² Verizon Ex.4, ¶¶ 114-144; Verizon Ex. 10A, ¶¶ 128-166; *Virginia Order* ¶¶ 38-55.

Verizon WV's provision of non-discriminatory billing to CLECs is confirmed by the FCC's findings, in approving Verizon's 271 Application in Virginia, that Verizon meets the requirements of the Act with respect to billing.⁴³ KPMG testified in the Maryland 271 proceeding that the Virginia billing systems -- which are the same as West Virginia's -- worked "very, very, very well." (Joint Exhibit 3, Maryland Tr. at 1347; *See also* Verizon Exhibit 6). This is consistent with KPMG's observation at the Maryland KPMG Workshop that the billing systems in Virginia and West Virginia were the best he has reviewed to date across all the regional Bell operating companies. (*See* Verizon Ex 10A, ¶ 129).

PwC performed the same attestation examination of Verizon WV's electronic BOS-BDT bills that it performed in Virginia, New Jersey and Pennsylvania. (*See generally* Verizon Exhibit 5). PwC's examination confirmed the comparability of the BOS-BDT bill to the paper bill used by KPMG in its test; the timely transmission of BOS-BDT bills by Verizon WV to CLECs; and that the amount of balancing records inserted into West Virginia BOS-BDT bills is extremely small — significantly less than one percent of the total current charges in the months of January through May 2002. (*See* Verizon Ex. 5; Verizon Ex. 4, ¶¶ 128-144).

Verizon WV has consistently exceeded the performance benchmark for the timeliness of DUF (daily usage feed) data, and timeliness in providing wholesale bills. (*See* Verizon Ex. 4, ¶¶ 124-125; Verizon Ex.10A. ¶ 130). In addition, Verizon WV has exceeded the standard of 95% of claims acknowledged within 2 business days in every month from January through August 2002 (BI-3-04). (*See* Verizon Ex. 10A, ¶ 131). Results fell below 95% in September 2002 only because eight claims were acknowledged one day late. (*Id.*).

Claims resolved within 28 calendar days of acknowledgment showed steady improvement rising from 12% in January to 87.93% in September (BI-3-05). (*Id.*). The improvement in this metric is the result of changes made in the Wholesale Claims organization, including reorganization and expansion, and implementation of additional analytical tools. (Verizon Ex. 10A, ¶ 132). Special studies show that for claims submitted after May 1, 2002, Verizon WV has achieved a resolution rate of more than 99.20% of claims resolved within 28 calendar days of acknowledgment for the period of May through September 2002. (*Id.*, ¶ 133). Changes made in the Wholesale Claims organization have resulted in a substantial reduction of the number of outstanding claims and disputed dollars since January 2002, and all of the open claims are less than 30 days old. (*Id.*, ¶ 134; *see also* *Virginia Order* ¶ 49 (relying on a similar reduction in outstanding claims to find that Verizon's billing dispute resolution process satisfies the Act)). In addition, instances of double billing have been virtually eliminated, dropping to only six in September 2002.⁴⁴ (*Id.*,

⁴³ *Virginia Order*, ¶¶ 38-55.

⁴⁴ "Double billing" refers to billing of the end user customer by both Verizon retail

¶¶ 138-141; Tr. Vol. 2 p. 240). Based on similar evidence that “instances of double billing appear to be minimal and continue to decrease,” the FCC rejected claims identical to those of FiberNet and StratusWave. (*Virginia Order* ¶ 48; *see also* Tr. Vol. 2 pp. 224-225).

FiberNet claims that Verizon WV does not always provide a claim number for billing disputes, and that it has 172 claims placing \$2.4 million in dispute and that some of these disputes have been unresolved for 9 months. However, Verizon WV’s records indicate that from October 1999 to the present, FiberNet has submitted approximately \$2.1 million in claims. For claims submitted during that three-year period, Verizon has already credited \$1.26 million and denied approximately \$860,000. Only approximately \$21,000 in FiberNet claims remain open pending conclusion of Verizon’s investigation of the claim. Differences between FiberNet’s records and Verizon’s records remain, and Verizon continues to work with FiberNet to reconcile their records. During this reconciliation, Verizon did identify instances where Verizon returned a claim submitted by FiberNet, due to lack of pertinent information needed to conduct an investigation. In those instances, a claim number was not assigned and specific instructions on how the claim should be resubmitted were provided. (Verizon Ex. 10A. ¶¶ 149-156; Tr. Vol. 1 at pp. 252-254.).

FiberNet cites no authority to support its claim that properly initiated billing disputes that are not resolved in a timely manner should be resolved presumptively in favor of the CLEC. In fact, the complexity of some billing claims may require a detailed and complex investigation that cannot be completed in 30 days. That point is reflected in the proposed C2C Guidelines that require that 95% of claims be resolved within 30 days. (Verizon Ex. 10A, ¶ 153).

FiberNet also complains that Verizon WV does not update its billing systems to accommodate new products and services, but rather Verizon WV manually processes the charges. FiberNet suggests that Verizon WV should be required to update its billing system within 60 days of a product introduction. And, FiberNet believes that it should not be required to pay invoices from Verizon WV until it receives the invoice on a mechanized basis.

The Commission notes that, on the one hand, FiberNet complains about backbilling, while on the other hand suggests that Verizon WV should not bill it until the billing can be done on a mechanized basis. Verizon WV is entitled to bill and collect for services rendered, regardless of the means by which the bill is developed. Verizon WV is often required by regulators to provide new products and services to CLECs in advance of Verizon WV’s ability to update the billing systems. When this occurs, CLECs such as FiberNet benefit

and a CLEC after the end user has migrated to the CLEC. However, bills from Verizon for charges incurred prior to the customer migration are not “double billing.” *See* Verizon Ex.10A, ¶ 138.

from the use of the new product or service, and billing is either processed manually or deferred until the billing system software is ready. Verizon WV's billing systems are large complex systems. Implementing new products and services in the billing systems requires in-depth analysis, the development of system requirements, the designing of system changes and the programming, testing and implementation of those changes. As with any large system, these types of changes can only be implemented in a time frame that has been established based on the complexity of the specific project. (Id., ¶ 145).

FiberNet, StratusWave, Staff and the CAD raise concerns about the automated embargo process and Verizon's internal controls around embargoes. Verizon WV asserts that its system change does not alter the process Verizon uses to assess when to impose an embargo. Verizon WV points to the following controls to alleviate the concerns raised by the parties: (1) approval of a Director level in the Finance Department; (2) approval of the Verizon Legal Department; and (3) expiration of the prescribed time period for payment in cure of the default, as stated in formal notice of payment default that is sent citing applicable tariff/contract terms. Additionally, Verizon argues that a CLEC would be restored to active status as part of an overnight process on the day it paid the applicable amounts. (Tr. Vol. 1 pp. 223-225; Verizon Ex. 10A, ¶¶157-161).

Nonetheless, the Commission is mindful of the fact that Verizon will be the party trying to collect a disputed bill and also the same party in charge of imposing the embargo. The Commission will not tolerate any unwarranted imposition of the Automated Embargo System as a means of bringing pressure on CLECs involved in legitimate billing disputes with Verizon. CLECs may file formal complaints including requests for immediate, interim relief in those situations in which they are threatened with an improper embargo for failure to pay disputed charges.

AT&T raised several billing issues at the hearing, each of which has been addressed and resolved. In a Verizon center that processes approximately 10 million bills per month, of which 60,000 (0.6%) are handled manually due to their size, human error on three occasions caused part of one carrier's bill to be included in the bill mailed to another carrier. Verizon has implemented process improvements to prevent such errors, increased training for personnel that handle the bills, and realigned and increased the supervisory functions associated with manual bill processing. (Tr. Vol. 1 at 97-98). In addition, from March 2001 to May 2002, Verizon WV over billed four CLECs purchasing UNE-P a combined total of \$50,000, as a result of a software problem that caused usage to be billed out of both expressTRAK and CRIS. This did not affect the usage information provided to the CLEC for billing its end user. The problem has been corrected and credits have been issued. (Tr. Vol. 1, pp. 94-97). Moreover, the FCC already reviewed this same system issue and noted that it had been corrected and did not constitute checklist noncompliance. (*Virginia Order*, ¶ 45).

None of the other CLEC claims are indicative of a systemic problem, or evidence that Verizon WV is not meeting its obligations under the Act. FiberNet claims that Verizon WV has not provided clear identification of charges on bills to enable FiberNet to compare those charges to the products it has ordered. In fact, as the FCC found, such information is readily available on Verizon's wholesale website and in the Universal Service Order Code database. (*Virginia Order*, ¶ 42, n.133; Verizon Ex. 10A, ¶ 147). Although FiberNet was erroneously billed for a collocation arrangement in New York, Verizon WV removed all charges from the incorrectly billed account and disconnected the account on November 7, 2001. (*Id.*, ¶ 143). A one-time error in connection with StratusWave's resale discount that occurred in February 2002 has been resolved. (*Id.*, ¶ 148). FiberNet gives no specific examples to support its claim that, when disputes are resolved in its favor, Verizon WV does not always process the credit. (*Id.*, ¶ 155). Nor does FiberNet provide any support for its claims that Verizon WV continues to bill FiberNet incorrectly even after a dispute has been granted, or continues to bill for service to an end user after the end user has been disconnected. (*Id.*, ¶ 136).

FiberNet's complaint that Verizon WV does not label the CD-ROM containing FiberNet's BOS-BDT with the billing account number has no material impact on FiberNet's ability to compete in the marketplace. There is no basis for FiberNet's contention that Verizon WV should provide the software to enable FiberNet to read the BOS-BDT bill. BOS-BDT is an industry standard for carriers to exchange billing information electronically. Software and documentation from Telcordia is provided to educate the user on the various BDT record types, and is copyrighted and available from Telcordia only. The supporting software and documentation is considered a cost of doing business which has been assumed by the 363 CLECs using the BOS-BDT in the former Bell Atlantic South territory, including 26 CLECs in West Virginia. (*Id.*, ¶ 165). FiberNet's complaints about the paper format of its bill are moot in light of the fact that FiberNet has the option of declaring its BOS-BDT as the "bill of record," and has been receiving its bills in this format since April 2002. (Verizon's OSS Rebut. ¶ 164).

Change Management: In order to demonstrate nondiscriminatory access to its OSS, Verizon WV must also provide evidence that it adequately assists competing carriers in the use of its OSS. Verizon WV offers CLECs extensive support, including a Wholesale Customer Support organization that employs more than 200 employees.⁴⁵ Verizon also has in place an OSS Change Management Process that aids CLECs and Verizon in managing the life cycle of the changes that are an inherent part of any system as complex as Verizon's OSS.⁴⁶ Verizon WV has implemented measurements that track Verizon's adherence to the

⁴⁵ Verizon Ex. 4, ¶ 146.

⁴⁶ *Id.*, ¶¶148-156.

OSS Change Management Process. From January through May 2002, Verizon satisfied the OSS Change Management time frames for 100% of the notices provided to CLECs.⁴⁷ The Change Management process that Verizon has in place for use in West Virginia is the same process that the FCC has repeatedly reviewed and improved; in fact, in its most recent section 271 order, the FCC noted that Verizon has a “long track record of compliance” with its change management obligations. *Virginia Order* ¶ 57.

3. Conclusion - OSS

Although the record reveals numerous problems with Verizon WV’s billing system, the record also reveals that Verizon WV has taken steps to correct these problems. Even with a perfect system, billing disputes will still occur. CLECs and Verizon WV will continue to have recourse to the Commission for arbitration of any unresolved billing disputes.

Further, the workshop process pointed out that there was confusion among West Virginia CLECs concerning Verizon WV’s wholesale OSS procedures. There are no Verizon WV wholesale representatives in West Virginia who could work with CLECs. In response, Verizon WV agreed to set up quarterly meetings in West Virginia with West Virginia CLECs to discuss issues of common concern and have placed that agreement in writing in the form of a Joint Stipulation. (Final Report on Workshops, p. 3; Verizon Ex. 12, ¶ 4.c.).

While these meetings will not be the solution to all OSS problems, including billing, and are not intended to replace existing wholesale procedures, they should go a long way toward reducing confusion and misunderstanding. The Commission expects that Verizon WV will have representatives of sufficient stature present at the quarterly meetings to answer questions and resolve problems that are brought to Verizon WV’s attention.

⁴⁷ Id., ¶ 155.

Further, the Commission takes comfort, as has the FCC in numerous Section 271 filings, that the proposed Carrier-to-Carrier (“C2C”) guidelines and Performance Assurance Plan (“PAP”), discussed below, will provide adequate assurance against any OSS “backsliding.”⁴⁸

In conclusion, we find that these OSS in use in West Virginia satisfy Verizon WV’s obligations under the Act. KPMG’s testing of these OSS, the extensive commercial use of these OSS, the performance of these OSS as measured by the relevant measurements that Verizon WV has offered, as well as the lack of any evidence of systemic problems with these systems allow us to conclude that Verizon WV has satisfied its OSS obligations.

B. Access to UNEs

1. Methods of Access

Verizon WV uses the same network facilities to provide and maintain unbundled network elements to requesting carriers that it uses to provide bundled services to its own end users. Verizon WV’s facility assignment system and processes do not discriminate between retail service requests and unbundled network element requests in selecting facilities. Verizon WV inventories network facilities in various assignment systems based on their technical characteristics and specific physical location(s). If facilities are available that meet the requirements of the unbundled element(s) requested, those facilities are assigned without regard to the unbundled nature of the request or whether the customer is a Verizon WV end user or a CLEC requesting a network element from Verizon WV. (Verizon Ex. 2, ¶ 97).

Verizon WV provides CLECs with access to UNEs, including loops, dedicated local transport, and dedicated end office and tandem switching ports, on a stand-alone basis at the CLECs’ physical or virtual collocation arrangements in a Verizon WV central office. CLECs can obtain access to these elements through cross-connect jumper wires at the CLECs’ collocation arrangements, and can also combine these network elements at their physical collocation arrangements by simply connecting these jumper wires. CLECs do not need their own transmission equipment in every Verizon WV central office to access or combine network elements with their own facilities to provide telecommunications services. (Id., ¶ 98).

In addition to standard physical and virtual collocation arrangements, Verizon WV also provides a variety of alternative collocation arrangements through which CLECs can access or combine individual network elements, such as smaller physical collocation cages, shared collocation cages and “cageless” collocation arrangements. Verizon WV offers each

⁴⁸ *Virginia Order*, ¶ 198.

of these alternatives pursuant to its interconnection agreements and in its collocation tariff, Network Interconnection Services Tariff P.S.C.–W.Va.–No. 218. (Id., ¶ 99).

No party has challenged Verizon WV’s provision of the above methods of nondiscriminatory access to UNEs, with the exception of Expanded Extended Loops, which are addressed under UNE combinations below and under Checklist Item 4. The Commission accordingly concludes that Verizon WV provides nondiscriminatory access to UNEs.

2. Access to UNE Combinations

Verizon WV provides nondiscriminatory access to Verizon WV’s various combination offerings. Verizon WV provides CLECs with the combination of an unbundled loop and unbundled local switching elements known as UNE-Platform (“UNE-P”) in accordance with the FCC’s rules. (Id., ¶ 100). Verizon WV also provides combinations of unbundled loop and interoffice facility network elements, also known as Expanded Extended Loops (“EELs”). (Id., ¶ 101).

The United States Supreme Court recently reinstated the FCC’s rules requiring ILECs, in certain circumstances, to combine UNEs for CLECs even if those UNEs are not already combined in the ILEC’s network. See *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646 (2002). In accordance with that decision, Verizon WV must accept new orders for EELs that are not already combined, subject to facility availability and in accordance with the FCC’s limitations on the conversion of special access facilities to EELs. (Id.). Verizon WV’s current EEL policies and practices — which are the same as Verizon’s practices in Virginia and throughout the former Bell Atlantic footprint — are in compliance with the FCC’s existing rules and regulations, as the FCC has found. *Virginia Order*, ¶ 61. The Commission therefore concludes that Verizon WV provides nondiscriminatory access to UNE combinations.

C. UNE Pricing

During the hearing in this matter, CLECs mentioned this issue as their most important issue, or one of their most important issues.⁴⁹

The Commission initially established UNE rates for Verizon WV in 1997.⁵⁰ Those rates are still in effect. In August 2002 the Commission heard evidence on the pricing of an

⁴⁹ Tr., Vol. 1, pp. 23 (AT&T); 25-26 (FiberNet); 29 (StratusWave); & 31 (North County).

⁵⁰ *Bell Atlantic West Virginia Inc.*, Case No. 97-1516-T-PC, Commission Orders (April 21, 1997, May 16, 1997 & June 26, 1997).

additional set of UNEs known as the Gap/Remand/Merger UNEs.⁵¹ On October 24, 2002, Verizon, Staff, and the CAD submitted a Joint Stipulation in the Gap/Remand/Merger case which resulted in reduced rates for all recurring and non-recurring charges proposed in that proceeding. (Gap/Remand/Merger Joint Stipulation). On December 18, 2002, the Commission entered an order adopting the October 24, 2002, Gap/Remand/Merger Joint Stipulation.

On October 15, 2002, the CAD, Staff and Verizon submitted a Joint Stipulation and Agreement for Settlement (Joint Stipulation) in this proceeding that, among other things, proposed to reduce still other UNE rates⁵² -- Verizon's loop and switching elements.

1. Position of Parties to the Joint Stipulation

In the Joint Stipulation, the parties agreed to:

1. Reduce per minute originating switching rates by over 70%;
2. Reduce per minute terminating switching rates by over 55%;
3. Reduce certain UNE rates in Density Cell 3 and to move certain wire centers from higher to lower Density Cell levels, thereby reducing statewide average loop rates by approximately 17%; and
4. Freeze these rates until the expiration of Verizon WV's Incentive Regulation Plan, scheduled for January 1, 2006.

(See Verizon WV Ex. 12).

CAD

⁵¹ *Verizon West Virginia, Inc.*, Case No. 01-1696-T-PC.

⁵² The Joint Stipulation also contains provisions related to (1) Verizon's dark fiber products; (2) modification to Verizon's proposed C2C Guidelines; and (3) quarterly CLEC meetings. Each of those provisions are discussed within the context of the appropriate section of this order.

The CAD believes the rates contained in the stipulation will pass the FCC's benchmarking tests, and will provide significant reductions for CLECs in the West Virginia telecommunications market. While a full-blown TELRIC cost proceeding would obviously produce different rates, the UNE prices in the stipulation are adequate to comply with checklist item 2 and will go into effect almost immediately, bringing benefits to customers and competitors.

The most important rates which competitors must pay are the monthly recurring rates for basic network elements like loops and switching. Facilities-based competitors like FiberNet provide their own switching, but make extensive use of unbundled loops. CLECs wishing to use UNE-Platform (UNE-P) will be concerned with both loop and switching rates. The reductions in basic loop and switching charges contained in the Joint Stipulation will provide savings for both types of competitors.

The current UNE switching rates for Verizon are among the highest in the nation. As shown in the UNE study submitted as Verizon Exhibit 14, 1000 minutes of use a month costs \$7.24 under Verizon's current rates. Under the rates proposed in the Joint Stipulation, the cost for the same level of usage will drop to \$2.55, a reduction of 65%. (Joint Exhibit 1, 6th Interim Report on Workshops, p. 16; see also Verizon Ex. 8A, p. 20).

The proposed rates were derived by benchmarking to New York's switching rate. The ratio of switching costs for New York and West Virginia produced by the FCC Synthesis Cost Model was compared to the FCC-approved New York UNE switching rate. As shown in Verizon Exhibit 14, the combined monthly rate in New York for switching and switch port is \$3.70 for 1000 minutes of use.⁵³ Under the proposed rates in West Virginia, the combined monthly rate for switching and switch port will be \$4.15.⁵⁴ Although the West Virginia rate is 12% higher than New York, it falls within the ratio produced by the FCC's cost model and thus passes the benchmarking test.

The same benchmarking procedure was used on Verizon's loop rates. Although Verizon's existing loop rates fell within the FCC's benchmark, the Joint Stipulation proposes a 17% reduction in average loop rates by creating a new UNE loop zone 3 and moving hundreds of thousands of access lines to lower cost UNE zones. Over 80,000 access lines move from zone 2 to zone 1; almost 110,000 access lines move from old zone 3 to zone 2; and over 100,000 access lines move from old zone 3 to new zone 3. (Verizon Exhibit 8A, p. 18). As a result of this reorganization, 715,000 access lines - 85% of Verizon's total lines - are contained in the two lowest cost UNE zones, 1 and 2. (Joint Ex. 1, 6th Interim Workshop Report, p. 17).

⁵³ Port rate of \$2.57 plus \$1.13 usage equals \$3.70.

⁵⁴ Port rate of \$1.60 plus \$2.55 usage equals \$4.15.

Additionally, CAD argues, West Virginia's overall and relative costs for both loops and UNE-P will go down substantially as a result of the Joint Stipulation. The UNE-P monthly rate will drop from \$33.42 to \$24.56, a decrease of \$8.86 or 26.5%.⁵⁵

Accordingly, CAD states that the loop rates and UNE zone reorganization contained in the Joint Stipulation result in multiple benefits and should be accepted by the Commission.

Staff

Staff opined that the UNE rate reductions set forth in the Joint Stipulation should spur competition. (Tr. Vol. 3, pp. 353-356). In the past Staff has supported proposals for a new Commission proceeding to determine appropriate, TELRIC-based UNE rates, to replace the rates adopted by the Commission in 1997. However, Staff does not propose that such a proceeding be initiated at this time. (Tr. Vol. 3, p. 364). Staff maintains its support for the UNE rate reductions contained in the Joint Stipulation. (Tr. Vol. 3, pp. 353-356).

As a result of the hearing in this matter, Staff raised one issue regarding the agreed switching rate. During cross examination, Verizon WV indicated that the FCC's recent statements regarding the possibility of removing switching from the list of UNEs required to be offered to CLECs. Staff was concerned that this would remove switching rates from state commission jurisdiction and may allow Verizon to change the switching rates agreed to in the Joint Stipulation. (Tr. Vol. 3, pp. 294-295).

In Staff's opinion, no provision of the Joint Stipulation releases Verizon WV from its obligation to maintain the switching rate proposed therein, unless the Commission reopens or reconsiders any UNE pricing issues prior to January 1, 2006. Accordingly, Staff recommended that the Commission order Verizon WV to adhere to the reduced switching rates set forth in the Joint Stipulation, until January 1, 2006, unless the Commission reopens or reconsiders any UNE pricing issue prior to that date and to further order that Verizon WV

⁵⁵ See, Attachment 1 to *Initial Brief of the Consumer Advocate Division of the Public Service Commission of West Virginia*, November 26, 2002.

shall not reduce or raise the switching rate set forth in the Joint Stipulation, even if the Commission's jurisdiction over UNE switching rates is modified by the FCC.

2. Position of the CLECs

AT&T

AT&T filed a UNE pricing declaration which stated that the stipulated rates were not cost based nor would they meet the goal of bringing competition to West Virginia. (AT&T Ex. 3 (UNE Declaration), p. 4). AT&T would not bring CLEC services to West Virginia under the stipulated rates. (Id.). AT&T opined that adopting the Joint Stipulation would be a "worst-case" scenario for West Virginia since it would leave the State with high local exchange rates and no prospect of competition. (Id.). AT&T urged rejection of the Joint Stipulation to leave CAD and Staff free to examine UNE rates without a freeze period. (Id., p. 6). AT&T pointed out that the alleged reductions were illusory only, since most competition was in Density Cell 1 and that rate was not being reduced. (Id., pp. 7-8). AT&T argued that the rates were not cost based and TELRIC compliant. (Id., p. 9). AT&T stated that the stipulated switching rates were still well above cost. (Id., pp. 10-11). Finally, AT&T believed that UNE rates should be subject of a special proceeding and Verizon WV's Section 271 should be put on hold in the interim. (Id., p. 16).⁵⁶

Alternatively, if the Commission were to set UNE rates in this proceeding, AT&T proposed that the rates should be reduced by 17% in each Density Cell. (Id., pp. 17-18).

FiberNet

⁵⁶ However, in its post hearing filing, AT&T conceded that a full cost proceeding would be "expensive and time consuming." AT&T also stated that such a proceeding would be premature before the FCC has completed its review of a broad range of UNE issues being addressed *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147. (*Triennial Review Proceeding*) and released its pricing decisions in the *Virginia Arbitration Proceeding*.

In its direct testimony FiberNet detailed a series of concerns: (1) Verizon WV's UNE rates were not in compliance with required TELRIC pricing principles, (FiberNet Ex. 3 (Direct of Virgil Parsons), p. 11); (2) Verizon WV's UNE rates had not spurred local exchange competition, (Id.); (3) Unless Verizon WV's UNE rates were significantly lowered FiberNet would not be able to economically afford to provide service in Density Cell 2 and Density Cell 3 areas, (Id., p. 12); (4) Under the current UNE rate structure, FiberNet would likely not be able to serve the residential market as it wished even though it had positioned itself to do so and saw a real need for that service, (Id.); and (5) Citing the CAD pricing studies, FiberNet argued that Verizon WV's UNE prices were among the highest in the nation⁵⁷ and the highest in the Verizon footprint.

FiberNet testified that, the Joint Stipulation did not lower any UNE rate but by shifting certain wire centers into lower Density Cells and creating a fourth Density Cell, the stipulating parties were able to achieve reductions for some Density Cells and a perceived statewide average loop reduction. (Id, p. 15). Although the switching rate decreases were actual reductions the decreases were virtually meaningless to FiberNet, Verizon WV's largest competitor, since it has its own switch and does not use local switching. (Id., p. 16).

FiberNet proposed a UNE Loop reduction of 40% across the board with Density Cell changes. (Id., p. 13). Although this reduction would still leave Verizon WV's UNE rates at the highest level in the Verizon footprint, Mr. Parsons stated that it would at least get Verizon WV's UNE rates more in line with those currently being charged in other Verizon jurisdictions. (Id.) Though FiberNet still endorses a cost study, it is willing to accept AT&T's proposal, as providing a real rate reduction that might offer incentives to new competitors. (FiberNet Ex. 4, (Rebuttal of Virgil Parsons), p. 3). However, FiberNet advocates its own Density Cell reconfiguration, even if the Commission adopted AT&T's rate proposal. (Id., p. 4).

StratusWave

StratusWave's testimony stated generally that the Joint Stipulation rates did nothing to alleviate its concerns with Verizon WV's rates (StratusWave Ex. 1, p. 8).

3. Discussion

⁵⁷ See, *Survey of Unbundled Network Element Prices in the United States* (Updated July 1, 2002) By Billy Jack Gregg, Director, Consumer Advocate Division, Public Service Commission of West Virginia. (*Survey of UNE Prices*).

The overall impact of the Joint Stipulation changes in loop rates is to reduce the average loop price in West Virginia from \$24.58 to \$20.41 – a reduction of approximately 17%. (Verizon Ex. 12, Joint Stipulation ¶ 4). The loop price reductions are significantly below the SGAT rates that the Commission previously approved as TELRIC compliant in Case No. 96-1516-T-PC, and are also well below the loop rates that Verizon WV could charge under the FCC’s benchmarking analysis. (Verizon Ex. 8A, ¶ 50). Under the Stipulation, rates in specific wire centers are reduced by as much as 34%, and over half of the lines in the state will now be in “urban” Density Cell 1, with the lowest loop rate. (Id.).

The Joint Stipulation also proposes a 71% reduction in originating switching and a 55% reduction in terminating switching. This reduction is significant to carriers such as AT&T that use the UNE platform (“UNE-P”). The switching rate decrease is well below Verizon WV’s SGAT rates and again passes the FCC’s benchmarking analysis. (Verizon Ex. 8A, ¶ 51).

UNE rates, moreover, cannot be examined without also considering the retail rates. West Virginia’s existing UNE-P rates for businesses in Density Cell 1 provide more “headroom” (difference between retail revenues and UNE-P rates) than forty-five other states.⁵⁸ The new rates proposed by Verizon, Staff and CAD would result in West Virginia having more “headroom” – that is, more potential CLEC profit opportunity – than forty-eight other states.⁵⁹

Even in the rural density cells with the higher UNE prices, competition is still possible because of the impact of the federal Universal Service Funding on the net cost to the CLECs of purchasing unbundled loops in these exchanges. Of the 57 exchanges in Density Cell 2, 50 receive universal service funding. FiberNet receives such funding, as can other qualified CLECs. The impact of this funding lowers the average cost of these loops from \$22.04 to \$19.40. The impact is even greater in Density Cells 3 and 4 where every loop in the exchange receives funding ranging from \$6.14 to \$37.22 per month. This lowers the average cost of Density Cell 3 loops from \$35.00 to \$23.62 and Density Cell 4 from \$43.44 to \$18.75.

⁵⁸ *Survey of UNE Prices.*

⁵⁹ *Id.*; see also Verizon Ex. 8A, ¶ 54.

At the hearing in this matter, AT&T urged the Commission to adopt rates like those in New Jersey, where “AT&T felt that the rates then allowed it to meet their business plan to enter in New Jersey” and where AT&T has “had significant customer acceptance for all offers.”⁶⁰ Verizon WV established at the hearing, however, that CLEC gross margins on UNE-P for business customers in West Virginia’s Density Cell 1 were five times as high as those for the same density cell in New Jersey, where there are ten times as many business customers.⁶¹ Although the Commission can understand why competitors might prefer to enter larger markets before coming to West Virginia, the Commission concludes that, with the approval of the Joint Stipulation negotiated by the Staff and the CAD with Verizon WV, the UNE rates in Verizon WV’s incumbent service area are below the rates that the Commission has previously found to be TELRIC compliant and give competitors an opportunity to enter the West Virginia market and make a profit.

AT&T and FiberNet have offered alternative rate decreases. AT&T would lower overall statewide 2-wire UNE loop rates by 17%, but reduce Density Cell 1 rates by more than 30%.⁶² FiberNet would lower UNE rates by 40% across-the-board.⁶³

Under Section 252(d)(1) of the Act, however, the Commission must price UNE rates “based on cost,” which under applicable FCC regulations means TELRIC pricing. No party disputes that the recommended rates under the Joint Stipulation are lower than those rates already found by the Commission to be TELRIC compliant. Likewise, no party disputes that the UNE-P and loop rates are substantially below the FCC’s TELRIC benchmark, and that the switching rates also are well below that benchmark. Accordingly, the Commission concludes that the proposals submitted by AT&T and FiberNet are not appropriate.

The Staff, the CAD and Verizon WV recommend in their Joint Stipulation that the Commission conduct “no further litigation over Verizon WV’s unbundled network element rates until the expiration of Verizon WV’s current Incentive Regulation Plan.”⁶⁴ The

⁶⁰ Tr., Vol. 2, pp. 62-63. Although the AT&T panel was talking about the lowering of the New Jersey switching rate at the time, AT&T’s form of market entry is the UNE-P, which is a combination of loop and switching. Tr. Vol. 2, p. 57.

⁶¹ Tr., Vol. 3, pp. 143-145, 228. AT&T witness Nurse commented that the costs included in the headroom analysis offered by Verizon WV did not include certain types of costs such as transport and advertising, and that therefore there was less headroom than indicated in Verizon WV’s analysis. Tr., Vol. 3, pp. 311-317. As he later admitted, however, these same types of costs were also not included in the analysis of Verizon New Jersey’s headroom. Tr., Vol. 3, pp. 331-333. Therefore, on a relative basis, it still appears that the headroom in West Virginia under the rates in the Joint Stipulation, and the corresponding opportunity for CLECs to enter the market and make a profit, remains much greater than that in New Jersey.

⁶² Tr., Vol. 2, pp. 59-61.

⁶³ FiberNet Ex. 3 (Direct Testimony of Virgil E. Parsons), p. 13.

⁶⁴ Joint Stipulation, ¶ 3.

Commission notes that the loop rates under the Joint Stipulation are over \$4 per loop less than the current rates, and over \$8 per loop less than the rates that likely would be produced by the FCC's benchmarking analysis.⁶⁵

The Commission finds that the price reductions under the Joint Stipulation are reasonable and in the public interest. The Joint Stipulation achieves an immediate and voluntary lowering of rates to levels that could not otherwise be achieved without extensive litigation before this Commission, and then, only upon persuasive proof that the lower rates are cost-based. Under the Joint Stipulation, Verizon WV, CLECs and the Commission also achieve wholesale rate stability through the end of Verizon WV's current IRP.

⁶⁵ Tr., Vol. 3, pp. 199-200, 203.

The Joint Stipulation explicitly does not “affect the rights of any CLEC to petition the Commission for arbitration of open issues in interconnection agreement negotiations, including rates issues, pursuant to Section 252(b) of the Act...”⁶⁶ CLECs therefore remain free to petition the Commission to arbitrate UNE rate issues, and the Commission will address any such petition, as well as any motions to dismiss under Paragraph 5 of the Joint Stipulation, at the time they are raised.⁶⁷

To clarify the Commission’s interpretation of the limitations upon Staff and CAD with regard to rate proceedings initiated prior to January 1, 2006, the Commission does not interpret the Joint Stipulation as precluding Staff’s or CAD’s participation in any UNE pricing cases instituted before January 1, 2006. Rather, the Commission interprets the Joint Stipulation to preclude Staff or CAD from initiating a case, by the filing of a motion or petition with the Commission, the purpose of which would be to lower UNE rates. The Commission does not interpret the Joint Stipulation to preclude Staff or CAD from participating in such a case that is initiated on the Commission’s own motion, or on the motion or petition of a party who was not a signatory to the Joint Stipulation. Nor, once such a case is open, would Staff or CAD be precluded from recommending in that case that UNE rates be lowered.

Staff raised a concern about Verizon’s ability to modify the switching rates set forth in the Joint Stipulation should the FCC remove switching rates from state jurisdiction. From a review of the Joint Stipulation, the Commission concludes that no provision of that document releases Verizon from its obligation to maintain the switching rates proposed therein, prior to January 1, 2006, other than by order of this Commission. In its approval of the Joint Stipulation, the Commission specifically directs Verizon WV to adhere to the reduced switching rates set forth in the Joint Stipulation, until January 1, 2006, unless the Commission reopens or reconsiders any UNE pricing issue prior to that date. Verizon shall

⁶⁶ Joint Stipulation ¶ 5.

⁶⁷ Paragraph 5 of the Joint Stipulation reads in relevant part as follows: “If the Commission, upon a joint motion to dismiss or other appropriate pleading(s) by the Parties in opposition to any reconsideration in any arbitration of the foregoing settlement of the Gap/Remand/Merger rates, should nonetheless decide to reopen or reconsider any UNE pricing issues before the expiration of Verizon WV’s current Incentive Regulation Plan, the Parties shall be released from their respective promises not to propose higher or lower rates for UNEs in the course of the proceeding in which the Commission reopens or reconsiders UNE pricing.”

not modify the switching rate set forth in the Joint Stipulation without Commission approval, even if the status of UNE switching rates is modified by the FCC.

D. Conclusion

Based upon the foregoing, the Commission concludes that Verizon WV satisfies the requirements of Checklist Item 2.

Checklist Item 3: Poles, Ducts, Conduits and Rights-Of-Way

Section 271(c)(2)(B)(iii) of the Act requires Verizon WV to offer “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [Verizon WV] at just and reasonable rates in accordance with the requirements of section 224.”

Verizon WV demonstrated that it complies with this checklist item. (Verizon Ex. 2, ¶¶ 104-120). No party challenged Verizon WV’s showing with regard to Checklist Item 3.

The Commission accordingly concludes that Verizon WV provides nondiscriminatory access to its poles, ducts, conduits and rights of way pursuant to Section 271(c)(2)(B)(iii), and therefore satisfies Checklist Item 3.

Checklist Item 4: Unbundled Local Loops

Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.” The FCC has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.⁶⁸

⁶⁸ *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67, n. 301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase “network interconnection device” with “demarcation point,” and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

A. Evidence and Positions of the Parties.

Verizon WV

Verizon WV claimed to offer a full set of unbundled loops, including analog and digital two-wire and four-wire loops, which CLECs can use to offer services such as basic exchange telephone service, ISDN, xDSL, DS-1 transmission, DS-3 transmission, Line Sharing and Line Splitting. (Verizon WV Ex. 2, pp. 53-54). Through March 2002, Verizon WV reported that it had approximately 18,000 stand-alone loops in service and approximately 2,700 loops provided as part of UNE-P combinations that include switching and transport elements. (Id., p. 54).

Verizon WV claimed that overall its actual UNE loop provisioning performance had been good. (Id.). For example, Verizon WV states that it consistently exceeded the parity standard for metrics PR-4-04 – “Percent Missed Appointments – Verizon – Dispatch New Loop” and PR-4-05 – “Percent Missed Appointments – No Dispatch – Platform.” From January through March 2002, the wholesale rate was .40% (missed appointments) in comparison to a rate of .75% (missed appointments) for retail. (Id., p. 55). Similarly, Verizon WV stated that it also provides maintenance and repair for UNE loops on a nondiscriminatory basis, consistently meeting or exceeding the parity standard for the majority of maintenance and repair performance metrics, such as MR-2-02 – “Network Trouble Report Rate – Loop” and MR-2-03 – “Network Trouble Rate – Central office.” (Id., p. 56).

Verizon WV also contended that other maintenance and repair performance measures for January 2002 through March 2002 showed service at parity with retail. (Id., p. 57). These included MR-4-01 – “Mean Time to Repair Total,” MR-4-04 – “Percentage Cleared (all troubles) within 24 Hours,” and MR-4-08 – “Percent Out of Service >24 Hours. (Id.). Similarly, Verizon WV stated that its repair quality performance in fixing POTS troubles as measured by “% Repeat Reports within 30 Days” – MR-5-01 also demonstrated that it was providing excellent service to CLECs. (Id.).

“Hot Cuts” entail the switching of a customer’s dial-tone service from Verizon WV to a CLEC with minimal disruption in service to the end user. (Id., p. 58). With regard to Hot Cuts, Verizon WV stated that it uses the same methods and procedures as are used in Pennsylvania, Massachusetts, and New York. (Id.). Verizon WV also showed that its performance during January 2002 through March 2002, exceeded the benchmark for PR-9-01 – “Percent on time performance – Hot Cut,” and only 0.04% of CLEC Hot Cuts had reported troubles within 7 days of installation. (Id., pp. 58-59).

Verizon WV further claimed to offer the same Digital Loop offerings as Verizon offers in Pennsylvania, Massachusetts, and New York. (Id., p. 59). Moreover, Verizon WV asserted that it offered CLECs in West Virginia the methods and procedures for provisioning xDSL Loops developed in the New York DSL Collaborative. As to maintenance and repair services, Verizon WV asserted that its performance on applicable measures from January 2002 through March 2002 demonstrated that Verizon WV had generally provided very good service for maintenance and repair for xDSL loops in virtually every category. (Id., pp. 60-62).

Verizon WV stated that it offers line sharing in West Virginia in accordance with the FCC's requirements in its *Line Sharing Order*, following the methods and procedures for provisioning line sharing orders as are being used by Verizon-PA. (Id., p. 62). Like Verizon-PA, Verizon WV stated that it offered CLECs in West Virginia a choice of two line sharing arrangements. One arrangement provides CLECs with the ability to install, own and maintain the splitter in the CLEC's own collocation arrangement. The second arrangement allows CLEC-owned splitters to be installed and maintained by Verizon WV in Verizon WV's own central office space. (Id., p. 63). Verizon WV stated that it had received few orders for line sharing in West Virginia, however, 100% of the line sharing orders that it did receive from January 2002 to March 2002 were completed on time. (Id., p. 65).

Verizon WV submitted that it permitted CLECs to engage in Line Splitting in a manner consistent with the FCC's Orders, and that the FCC had already found in Pennsylvania that Verizon makes it possible for CLECs to engage in line splitting. According to Verizon WV, CLECs in West Virginia can offer voice and data over a single loop in a line splitting arrangement in the same manner that is available to CLECs in Pennsylvania. (Id., p. 66). CLECs seeking to offer voice and data over a single loop may do so by purchasing an unbundled xDSL-capable loop and unbundled switching combined with transport terminated to an appropriate collocation arrangement and connected to a CLEC-provided splitter and DSLAM equipment. With this line splitting arrangement, a CLEC can provide both the voice and data service itself or it can partner with another CLEC. The unbundled network elements that comprise this line splitting arrangement are currently available from Verizon WV. (Id.).

As in other Verizon states, Verizon WV provides access to Unbundled High Capacity Loops, including DS-1s, DS-3s, and other specially designed digital loops. As of the end of March 2002, Verizon WV had provided approximately 335 Unbundled High Capacity Loops to CLECs. (Id., p. 68). Verizon WV asserted that it will migrate existing high capacity loop facilities to fill a CLEC order, including cross-connecting to a CLEC's collocation arrangement, installing the appropriate high capacity card in spare slots or ports, correcting conditions on existing copper facilities that could affect transmission characteristics, and

terminating the high capacity loop in the appropriate network interface device (“NID”) at the customer’s premises. (Id., pp. 68-69).

Finally, Verizon WV explained that it offered EEL arrangements in compliance with FCC orders. An EEL is an arrangement that enables a CLEC to use combinations of unbundled loops and unbundled dedicated interoffice transport, including multiplexers, to provide local exchange service to an end user. (Id., p. 71). The loop unbundled network element component of an EEL includes two-wire analog and digital loop offerings, four-wire analog loops, four-wire digital 56 Kbps, and high capacity DS-1 and DS-3 loops. (Id.).

FiberNet

FiberNet raised issues concerning the provisioning of high capacity DS-1 and DS-3 loops, Verizon WV’s use of Integrated Digital Loop Carrier (“IDLC”) and EELs. In order to offer its services at competitive prices, FiberNet stated that it must be able to obtain DS-1 and other high capacity facilities from Verizon WV as unbundled network elements. (FiberNet Ex.1, p. 10). In this regard, FiberNet stated that for the year 2002, FiberNet attempted to order 191 UNE DS-1s from Verizon WV. Of these 191 UNE DS-1s that FiberNet tried to order, FiberNet stated that it received a “no facilities” rejection from Verizon WV on 95 of these orders or nearly 50%. (Id.). FiberNet opined that this high rejection rate on UNE DS-1 orders was especially significant given the limited amount of local exchange competition present in West Virginia today. FiberNet questioned how Verizon WV would be able to respond to increased CLEC demand in a post-Section 271 environment if it could not adequately provision UNE DS-1s at present volumes. (Id., pp. 10-11).

FiberNet also took issue with Verizon WV’s position with respect to when “construction” is allegedly required in order to make DS-1 circuits available as an UNE. For example, if Verizon WV is required to install a doubler or apparatus shelf in order to make a DS-1 available as a UNE, Verizon WV refuses to do so. (Id., p. 11). FiberNet stated that it even asked Verizon WV whether it would be willing to install necessary equipment to make these DS-1 facilities available if the requesting CLEC agreed to pay the non-recurring charges associated with the equipment installation, but that Verizon WV again refused. (Id.).

Faced with a “no facilities” rejection of its initial UNE DS-1 order, FiberNet stated that it must inevitably order the necessary circuit as special access at a much higher rate, because unlike a UNE DS-1, Verizon WV will do “construction” for special access DS-1 orders. FiberNet frequently has no real alternative but to order the special access facility and pay the higher access rates, especially if it wants to honor a commitment made to customers in a timely manner. (Id, p. 12). In addition to the extra cost inherent in the ordering of a special access facility as opposed to a UNE, the provisioning and installation process for

these high capacity circuits are needlessly delayed while Verizon WV completes the “construction” necessary to make the required facility available to FiberNet. (Id., p. 13).

As to IDLC, FiberNet asserted that Verizon WV has effectively prohibited it from providing service in situations where Verizon WV is serving a customer with IDLC. FiberNet explained that this occurs because such customers have little chance to switch to FiberNet and, if Verizon WV does in fact provision the service to such customer, that service will be noticeably inferior to the services that Verizon WV provides. (Id., p. 25). Based upon information supplied by Verizon WV, approximately 19% of Verizon WV’s loops are served on an IDLC basis. Moreover, on a wire center basis, FiberNet stated that this figure could be materially higher. Finally, FiberNet asserted that Verizon WV’s performance metrics did not measure the volume of orders cancelled for lack of facilities due to IDLC presence. (Id., pp. 30-31). For example, PR-3-05-02 and –03 capture cancellations that are being held for eventual facilities. When an order is rejected for “no facilities ever” as is the case with IDLC rejections, the voided order is not reflected in the metrics and is therefore not reported or counted. (Id.).

FiberNet stated that it had a difficult time ordering EELs from Verizon WV. (Id., p. 41). Despite the fact that the United States Supreme Court recently held that Verizon had to make EELs available to CLECs as unbundled network elements, FiberNet stated that it still was unable to order EELs as UNEs in West Virginia. (Id., p. 42). As a result, FiberNet opined that Verizon WV’s inability to accept and provision FiberNet’s EEL orders was but another indication of Verizon WV’s non-compliance with the applicable sections of the competitive checklist. (Id., pp. 42-43).

AT&T

AT&T asserts that Verizon WV’s “no build” policy for provisioning loops to CLECs is discriminatory and artificially inflates CLEC’s costs and thereby restricts local exchange competition in West Virginia. (AT&T Ex. 1, p. 3). Verizon WV has enforced a discriminatory and anti-competitive “no facilities” policy, whereby Verizon WV refuses to provide CLECs unbundled loops when doing so purportedly would require “additional construction.” Yet, according to AT&T, Verizon WV aggressively solicits and fills orders received from its retail end users for the same capacity that Verizon WV refuses to provision to CLECs as UNEs. (Id., p. 4).

CLECs must endure a burdensome process to order DS-1 and other high capacity facilities from Verizon WV as special access and then convert the special access circuit to a UNE. AT&T opines that Verizon WV’s “no build” policy is wholly inconsistent with UNE pricing because the pricing for UNE loops, switches and other facilities typically include a substantial percentage of spare capacity to allow for future growth. However, Verizon WV’s

practices with respect to high capacity facilities and interoffice facilities deny CLECs the benefit of that spare capacity even though CLECs are paying for it in the UNE prices. (Id., p. 4). Furthermore, AT&T contends that there is no metric or oversight that effectively verifies Verizon WV's assertions of "no facilities." (Id., p. 6).

StratusWave

StratusWave cited similar experiences with respect to its efforts to successfully order UNE DS-1s from Verizon WV. According to StratusWave, roughly 35% of the time that StratusWave submits an order to Verizon WV for a UNE DS-1 it receives a "no facilities" rejection. (StratusWave Ex. 1, p. 7). In fact, StratusWave stated that it was recently informed by Verizon WV that there are just "no more facilities available" in Woodsdale, West Virginia, a suburb of Wheeling where many businesses are located. (Id.). This non-availability requires StratusWave to order the more expensive special access DS-1s which then must be converted to a UNE DS-1. (Id.).

In addition to the general unavailability of UNE DS-1s, StratusWave also complained about the reliability of Verizon WV's UNE DS-1s. According to StratusWave, a regular disruption of service in its UNE DS-1s occurs in about 20% of all such circuits. Also, StratusWave stated that it experienced intermittent errors on about 50% of its UNE DS-1s. (Id., p. 8).

CAD

Verizon's "no facilities" policy encompasses more than the absolute physical absence of cable. Verizon will refuse to provision high capacity lines on the basis of "no facilities" in seven situations: (1) when Verizon must deploy new copper or fiber facilities; (2) when Verizon must deploy central office repeaters; (3) when Verizon must deploy new multiplexers; (4) when Verizon must deploy a new apparatus case; (5) when Verizon must reconfigure a multiplexer; (6) when Verizon must deploy new facilities where it cannot correct a defect in existing facilities and no facilities are available; and (7) when Verizon must unload a properly loaded copper wire pair. (Verizon Ex. 8A, pp. 29-30; Tr. Vol. 3, p. 53). This policy also encompasses adding a splice, a shelf, or any electronics to a circuit to provision a high capacity line. (Tr. Vol.3, p. 51). On the other hand, Verizon will perform these same functions for its own customers at no additional cost, other than the regular installation fee. (Tr. Vol. 3, p. 48).

If Verizon refuses to provide the high capacity line because of the “no facilities” policy, it will nevertheless build the facilities if the CLEC orders the same facilities under Verizon’s special access tariff, and pays the higher special access rate for the minimum period required in the tariff.⁶⁹ At the end of the minimum special access service period, the CLEC can convert the newly built facility to a UNE and pay the lower UNE recurring prices.

While it may be true that Verizon must incur additional expense in the seven situations encompassed in its “no facilities” policy, it is also true that the determination of whether there are no facilities is a unilateral decision made by Verizon alone. (Tr. Vol. 3, p. 53). Even though a CLEC may escalate the decision if it disagrees, the business reality of having to provision a prospective customer in a short time frame renders the solace of such a procedure illusory. Even more disturbing is the fact that Verizon may allege “no facilities” when the facilities previously provided by Verizon are inadequate to meet minimum Commission service quality standards. (Tr. Vol. III, p. 77). Such a policy could potentially foreclose competition in many of the rural areas of West Virginia. Finally, the special access tariff rate is charged in every “no facilities” situation, regardless of the actual cost required to provide or complete needed facilities. (Tr. Vol. 3, p. 67). The CAD believes the potential for abuse inherent in such a process is very great.

⁶⁹ The minimum service period for special access T-1 lines is 2 months. For special access DS-3 lines, the minimum period is one year. (Verizon Ex. 8A, p. 45-46; Tr. Vol. 3, p. 56).

Although Verizon's "no facilities" policy is not grounds for disapproval of Verizon's application, the potential for abuse of this policy is too great to ignore. CAD opines that the Commission should continue to monitor Verizon's implementation of this policy by opening its own investigation in West Virginia, or by directing Staff to monitor or participate in the on-going proceeding in Virginia⁷⁰.

In spite of the value and importance of EELs to facilities-based CLECs in West Virginia, like FiberNet, it was impossible to order EELs in West Virginia until August 2002. (Verizon Ex. 8A, p. 44). Even after it was possible to order EELs, many CLECs complained that ordering EELs was difficult, that sequential provisioning resulted in delay and added expense, and that it was impossible to reuse existing resale loop facilities to provision an EEL. (Joint Exhibit 1, 7th Interim Report on Workshops, pp. 7-8).

⁷⁰ As a result of concern about the "no facilities" policy, Virginia has initiated a proceeding to investigate the application and ramifications of this policy. (Tr. Vol. III, pp. 83-84). See, *Virginia Arbitration Order*.

In response to these criticisms, Verizon has agreed to several actions. In paragraph 3.b. of the Gap/Remand/Merger Joint Stipulation, Verizon agreed to provide on its website a listing of commonly ordered EELs available in West Virginia. Verizon also agreed to allow reuse of existing resale lines as part of an EEL order.⁷¹ West Virginia is the first state where reuse is being allowed and Verizon and FiberNet are still working out ordering and provisioning procedures. At hearing, FiberNet witnesses stated that EEL orders will now flow-through, but that T-1 EELs had a very high rejection rate because of “no facilities.” (Tr. Vol. 2, pp. 148-149).

Staff

Staff believes that there are several problems associated with the manner in which Verizon WV provides access to hi-cap loops. First, the cost for special access hi-capacity loops is substantially greater than the UNE rates for such loops. (FiberNet Ex.1, p. 12; StratusWave Ex.1, p. 6; AT&T Ex. 1A, ¶ 9). Second, there is no metric measuring Verizon WV’s installation intervals for these facilities. (Id.; Tr. Vol. 2, at 294-300). Third, the trouble rate for these facilities, as well as Verizon WV’s response to those troubles is likewise not subject to any metric. (Tr. Vol. 2, pp. 294-300; Tr. Vol. 3, pp. 14-15).

Moreover, once the CLECs opt to order hi-capacity loops as special access facilities, they are required to “take” such facilities for a minimum time period, before they may convert the hi-cap loops to UNE loops, thereby paying UNE rates for the facilities. In addition, Verizon WV charges the same rate for special access hi-cap loops, regardless of the amount of “construction” necessary to provision the loop. In other words, it costs as much to get a special access hi-cap loop where only a splice or additional piece of electronic apparatus is needed to provision it, as it does to get the same loop where no facilities previously existed at all. (Tr. Vol. 3, at 76-78).

Both the New York and Virginia commissions have initiated a proceeding in order to review Verizon WV’s “no build” policy. (Tr. Vol. 3, pp. 96, 118). In addition, the FCC has determined to address Verizon WV’s “no build” policy in its upcoming *Triennial Review Proceeding* or in an “appropriate enforcement” proceeding. (Tr. Vol. 3, pp. 115-116).

Staff recommended that the Commission: (1) initiate a general investigation into the “no facilities” policy; (2) adopt special access metrics, on an interim basis, or alternatively, adopt Joint Competitive Industry Group special access metrics proposed by CLECs to the

⁷¹ Verizon also agreed to allow reuse of existing facilities in the provisioning of “M-loops,” a T-1 line with a multiplexer attached to the end. Up to 24 voice-grade lines can be attached to this multiplexer. An M-loop is similar to an EEL, but is ordered differently. (Tr. Vol. II, pp. 150-152; Final Report on Workshops, pp. 3-4).

FCC in response to a notice of proposed rulemaking⁷²; (3) not defer to the FCC on the special access issue as it will not affect intrastate special access facilities; and (4) if the Commission adopts special access metrics, it should request authority from the FCC to make special access metrics to in-state special access facilities.

⁷² “Notice of Proposed Rulemaking,” *I/M/O Performance Measurements and Standards for Interstate Special Access Services*, CC Docket No. 01-321, CC 01-339 (Rel. Nov. 19, 2001).

Staff opined that the ordering process for different speed EELs is unnecessarily complicated. Verizon WV requires two separate orders and two separate order charges apply. Moreover, Verizon WV requires the orders to be placed sequentially, with the higher level service being ordered first. (FiberNet Ex. 1, p. 43; Tr. Vol. 3, pp. 103-106).⁷³ In other words, the IOF order (DS-3) must be completed and service activated before the corresponding loops (DS-1s) can be ordered. FiberNet Ex. 1, at 43 & Fn. 21, citing Verizon CLEC Handbook, Volume 3, Section 2.12.

The difficulties associated with a coordinated EEL ordering process appear minimal. For one thing, the CLEC must order both components of the EEL together, so there is no chance that the CLEC could order the IOF component, and then postpone indefinitely ordering the loop component while it pays nothing for the IOF. Second, by submitting both the IOF and loop orders simultaneously, the CLEC learns whether there will be a “no facilities” determination before it has purchased an IOF for which it must pay while the loop is being ordered via special access. And although Verizon WV claims the coordinated ordering process is “technically unworkable,” it admitted that it has a “manual workaround” to deal with it. (Tr. Vol. 3, at 109). Staff recommended that Verizon WV be required to file appropriate tariff sheets implementing the coordinated EEL ordering process, consistent with the Massachusetts and Rhode Island tariffs.⁷⁴

Verizon WV Rebuttal

In its Checklist Rebuttal Declaration, Verizon WV argued that the FCC has held that the technological limitation of IDLC does not justify a finding of checklist non-compliance. (Verizon Ex. 8A, p. 47). Verizon WV stated that “there simply are no points within the central office building and outside the serving switch where individual voice grade, analog circuits being transported by the integrated system can be disconnected (unbundled) from the switch and re-connected to the CLEC’s collocated equipment as a two-wire analog UNE

⁷³ Verizon states that it follows Alliance for Telecommunications Industry Solutions (ATIS) guidelines for ASR orders with regard to ordering higher level service first. Tr. Vol. 3, p. 105.

⁷⁴ Verizon raised one other concern with the coordinated EEL ordering process -- money. In both Massachusetts and Rhode Island, the two orders -- IOF and loop -- are submitted simultaneously and treated as one order. This means only one service order charge. Verizon claims that it under-recovers its cost for the service orders. Tr. Vol. 3, p. 108. Staff is willing to consider Verizon’s argument in the context of an appropriate tariff filing.

loop. (Id., p. 47). Verizon WV contended that the only issue for Section 271 purposes related to IDLC is whether Verizon WV has procedures in place that will allow a CLEC to obtain service for its new customer using a different loop, if one is available, and the answer to this question is “yes.” (Id., p. 48). Verizon WV explained its procedures for processing UNE loop requests for customers served on IDLC, then added that in such circumstances, CLECs have the option of ordering service on UNE-Platform or Resale, both of which can be provided to CLECs on loops using IDLC technology. (Id., p. 49). Further, Verizon WV asserted that both IDLC substitutes, two-wire analog and UDLC loops, meet the technical transmission characteristics that are included in Verizon’s technical reference documents. (Id., p. 50).

Verizon WV asserted that it had an obligation to provision DS-1 facilities as UNEs only where such facilities currently exist. However, Verizon WV stated that it did not have an obligation to build new facilities or add electronics to existing facilities for the purpose of providing those facilities as an unbundled network element. (Id., p. 27). Notwithstanding this fact, Verizon WV stated that it goes beyond its unbundling obligations in certain situations where not all of the necessary facilities is available, but the loop can be activated without the need for additional construction or equipment installation. (Id., p. 28). Verizon WV further stated that it will build new DS-1 facilities for wholesale customers on the same terms and conditions under its special access tariffs or applicable state tariffs. (Id., p. 30). Finally, Verizon WV stated that CLEC complaints regarding its “no facilities” policy were not germane to a Section 271 approval proceeding. (Id., p. 33).

Verizon WV stated that UNE EELs can be ordered and provisioned in West Virginia, and further that the process Verizon WV uses for ordering EELs meets industry standards and is at parity with the processes for special access services. Specifically, pursuant to applicable law, effective August 21, 2002, Verizon WV began accepting orders for EELs in West Virginia in full compliance with all existing regulations. (Id., p. 44). With regard to ordering and provisioning of EELs, Verizon WV claims that it complies with industry guidelines, and that the same processes apply to both wholesale and retail services for DS-1 and DS-3 ordering and provisioning. (Id., p. 41). Finally, Verizon WV stated that the process in place in Massachusetts and Rhode Island wherein the ordering of multi-speed EELs is coordinated thereby eliminating the billing for the IOF until the loop portion is turned up for service should be rejected. (Id., p. 42). Verizon WV contends that the state commissions in those two jurisdictions ignored industry standards and imposed manual tracking and coordination that could easily lead to errors. (Id.).

B. Discussion

1. IDLC

On the issue of IDLC loops, FiberNet contends that it has no unbundled access to loops served on IDLC. If FiberNet, or another CLEC in West Virginia orders an unbundled loop for a customer served on IDLC, Verizon WV makes an attempt to provision the requested loop by transferring the customer to spare copper facilities or Universal DLC. Although Verizon WV confirms that approximately 19% of its local loops are served by IDLC, Verizon WV maintained that only about 1.6% of these local loops are at outside plant terminals where the only type of loop facility is IDLC. (Tr. Vol. 3, pp. 35-36, 86). Verizon WV stated that when it is time to put more facilities into an outside plant terminal, if the terminal previously had only IDLC available loop types, Verizon WV will put in additional copper cable facilities or some additional universal digital loop carrier facilities (DLC). (Verizon WV Ex. 8A, p. 49).

Based on Verizon WV's continuing efforts to increase the level of spare copper and universal DLC within its network in West Virginia, and based on the FCC's approval of the same unbundling processes and procedures used in other jurisdictions, the Commission believes that Verizon WV satisfies its obligation to provide CLECs with unbundled loops when a customer is served by IDLC. If a CLEC such as FiberNet happens to encounter a particular area or wire center that is served either exclusively or primarily through IDLC thereby making migration to the CLEC difficult or impossible, the affected CLEC can and should bring this matter promptly to the attention of the Commission.

2. "No facilities"

As of the end of March 2002, Verizon WV had provided approximately 335 Unbundled High Capacity Loops to CLECs. (Verizon Ex. 2, p. 68). Verizon WV will migrate existing high capacity loop facilities to fill a CLEC order, including cross-connecting to a CLEC's collocation arrangement, installing the appropriate high capacity card in spare slots or ports, correcting conditions on existing copper facilities that could affect transmission characteristics, and terminating the high capacity loop in the appropriate network interface device ("NID") at the customer's premises. (Id., pp. 68-69). Nonetheless, the CLECs complain that some of their orders for high capacity loops are denied based upon Verizon WV's "no facilities" policy.

Under the FCC's rules, an ILEC is not required to build new facilities or install additional equipment.⁷⁵ The FCC has addressed this issue in previous 271 cases, and has repeatedly held that Verizon's DS-1 UNE provisioning policy, which AT&T and FiberNet

⁷⁵ See *Pennsylvania Order* ¶¶ 91-92; *New Jersey Order* ¶ 151.

challenge here, is consistent with current FCC rules and the Act.⁷⁶ In its recent Section 271 order approving the Verizon Delaware and New Hampshire companies, the FCC again found this process, based upon the evidence presented, to be checklist compliant and stated that this specific issue will be addressed in its *Triennial Review Proceeding* or an appropriate enforcement proceeding.⁷⁷ This same issue was raised, yet again, in the Virginia 271 proceeding and the FCC again reached the same conclusion in its October 30, 2002, order approving Verizon for long distance authority in Virginia.⁷⁸ For these reasons, the Commission concludes that the evidence presented is not sufficient to find noncompliance with this Checklist Item.

Nonetheless, the Commission is concerned by the issues presented by the CLECs, Staff and CAD regarding the “no facilities” policy. We agree with the CAD that it is appropriate to initiate a proceeding for continued Commission review of the “no facilities/special access” issues raised in this proceeding. Specifically, this proceeding shall address: (1) the activities Verizon WV defines as “construction”; (2) how the special access rates charged by Verizon WV compare to its costs of such “construction,” and whether specific non-recurring charges can be established for the principal types of construction identified by Verizon WV; (3) whether permanent special access metrics should be adopted, and if so, what those metrics should be; and (4) whether any monetary consequences should flow from Verizon WV’s failure to meet any special access metrics that may be established.

The Commission shall direct Staff to develop a proposed notice of this proceeding that will be sent to CLECs. The Commission shall direct Staff to conduct a series of meetings that will address the issues set forth above. A minimum of four meetings within a six month time period shall be held between Verizon WV and the interested parties. Staff shall provide a report to the Commission at the conclusion of each meeting and at the conclusion of the six month period. Upon receipt of the final report, the Commission shall take appropriate action, regarding the subject of this proceeding.

3. EELs

The Commission notes that it was impossible to order EELs in West Virginia until August 2002. However, since that time, many CLECs complain that ordering EELs was difficult and that it was impossible to reuse existing resale loop facilities to provision an EEL.

⁷⁶ *Pennsylvania Order* ¶¶ 91-92; *New Jersey Order* ¶ 151.

⁷⁷ *Delaware/New Hampshire Order* ¶ 112 and footnote 392.

⁷⁸ *Virginia Order* ¶ 141 and footnote 492.

In response to these criticisms, Verizon has agreed to several actions. In paragraph 3.b. of the Gap/Remand/Merger Joint Stipulation, Verizon agreed to provide on its website a listing of commonly ordered EELs available in West Virginia. Verizon also agreed to allow reuse of existing resale lines as part of an EEL order.⁷⁹ Verizon's commitment to honor its obligations set forth in the Gap/Remand/Merger Joint Stipulation reasonably resolves this issue.

Additionally, AT&T, FiberNet and Staff assert that Verizon's requirements for ordering new EELs creates significant burdens for CLECs that increase costs and create delays in the provisioning of new services to customers. This complaint centers around the "sequential ordering" requirement.

Verizon WV is using the same EEL ordering processes that are used by Verizon in New Jersey, Delaware, and Virginia where Verizon has received FCC approval to provide interLATA service.⁸⁰ In its consultative role to the FCC in the present proceeding, the Commission sees no reason to advise that Verizon WV be denied Section 271 relief on these grounds.

Nonetheless, the Commission maintains independent authority pursuant to Chapter 24 of the *West Virginia Code*. In that role, the Commission agrees with the positions of AT&T, Staff and FiberNet that Verizon WV should be required to use a "coordinated" ordering process for these facilities and to file tariff sheets setting forth the coordinated EEL ordering process.

Conclusion

Based upon the foregoing, the Commission concludes that Verizon WV satisfies the requirements of Checklist Item 4.

Checklist Item 5: Unbundled Local Transport

Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."

⁷⁹ Verizon also agreed to allow reuse of existing facilities in the provisioning of "M-loops," a T-1 line with a multiplexer attached to the end. Up to 24 voice-grade lines can be attached to this multiplexer. An M-loop is similar to an EEL, but is ordered differently. (Tr. Vol. 2, pp. 150-152; Joint Ex. 1, Final Report on Workshops, pp. 3-4).

⁸⁰ Verizon Ex. 8A, ¶ 84.

The facts in support of Verizon WV's compliance with Checklist Item 5 are found in Verizon Ex. 2, ¶¶ 185-201. FiberNet and AT&T challenged Verizon WV's assertions solely with respect to the company's "dark fiber" offering. (FiberNet Ex. 1, pp. 31-41; AT&T Ex. 1A, ¶¶ 18-28). Verizon WV controverted FiberNet's and AT&T's assertions and argues that its "dark fiber" offering is consistent with prior FCC rulings, and therefore does not constitute Checklist noncompliance. (Verizon Ex. 8A, ¶¶ 113-139).

Verizon WV's procedures with respect to dark fiber, however, are substantially the same as the procedures that have been approved in Verizon's Virginia and Pennsylvania applications.⁸¹ Furthermore, the FCC has agreed with the State's approval of these procedures. The Commission likewise rejects the arguments of FiberNet and AT&T that Verizon is checklist noncompliant due to its dark fiber procedures.

Moreover, pursuant to the Joint Stipulation, Verizon WV is obligated to "propose terms and conditions for its dark fiber product that implement those rulings on dark fiber" ultimately made by the FCC in its Virginia arbitration after reconsideration, appeal, modification or final adjudication.⁸² (Verizon Ex. 12, ¶ 6 & Fn. 2). The complaints and concerns advanced by the CLECs regarding Verizon WV's "dark fiber" offering are addressed in the Joint Stipulation. The Commission concludes that the provisions in the Joint Stipulation constitute a reasonable and appropriate manner to resolve the parties' concerns regarding Verizon WV's dark fiber products.

Based on the foregoing, the Commission concludes that Verizon satisfies the requirements of Checklist Item 5.

⁸¹ *Virginia Order* ¶¶ 145-147, 182; *Pennsylvania Order* ¶¶ 109-113; *see also* Verizon Ex. 8A, ¶ 128.

⁸² Verizon Ex. 12, ¶ 4.a.

Checklist Item 6: Local Switching

Section 271(c)(2)(B)(vi) of the Act requires that a BOC provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.” The FCC has said that unbundled local switching includes “line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.”⁸³ In addition, “local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.”⁸⁴ Further, satisfaction of this checklist item requires that the unbundled local switching provided enable the CLEC “to offer, and bill for, exchange access and the termination of local traffic.”⁸⁵

It is undisputed that Verizon WV provides CLECs with local switching unbundled from transport, local loop transmission, or other network elements, in accordance with its obligations under the Act. (Verizon Ex. 2, ¶¶ 202-221). Verizon WV’s processes and procedures are the same as those used in Pennsylvania and Virginia, where the FCC has found that Verizon meets the requirements of the Act. (Id., ¶ 205; *Virginia Order* ¶ 184).

⁸³ *New York Order* ¶ 343.

⁸⁴ Id.

⁸⁵ Id.

It is further undisputed that Verizon WV has demonstrated compliance with the requirements for this checklist item by showing that it provides: (1) line-side and trunk-side facilities; (2) basic switching functions; (3) vertical features; (4) customized routing; (5) shared trunk ports; (6) unbundled tandem switching; and (7) usage information for billing exchange access; and usage information for billing reciprocal compensation.⁸⁶

The Commission concludes that Verizon WV has shown here that it provides CLECs with the same unbundled local switching as the FCC approved for Verizon in Pennsylvania and other states where Verizon has received 271 approval, including, most recently, in Virginia. (Verizon Ex. 2, ¶¶ 205-223). No party challenged Verizon WV's compliance with this checklist item. The Commission therefore concludes that Verizon WV satisfies Checklist Item 6.

Checklist Item 7: 911/E911, Directory Assistance, and Operator Services

Section 271(c)(2)(B)(vii) of the Act requires Verizon WV to offer nondiscriminatory access to (1) E911 services; (2) directory assistance ("DA") services to allow other carriers' customers to obtain telephone number information; and (3) operator call completion ("OCC") services.⁸⁷

⁸⁶ *New York Order* ¶ 346.

⁸⁷ With regard to DA services access, the competitive checklist requires (1) that customers of all carriers are able to access Verizon WV's DA service and obtain a directory listing, notwithstanding the identity of the requesting customer's local service provider or the identity of the carrier for the customer whose listing is requested; and (2) that Verizon WV provide nondiscriminatory access "to the directory assistance service provider selected by the customer's local service provider, regardless of whether the competitor provides such services itself; selects [Verizon WV] to provide such services; or chooses a third party to provide such services." OCC services referred to in this checklist item include "any automatic or live assistance to a consumer to arrange for the billing or completion, or both, of a telephone call," including busy line verification, emergency interrupt, and operator-assisted directory assistance. *See Virginia Order*, Appendix C, ¶¶ 57-58.

Verizon WV offers CLECs nondiscriminatory access to E911 services and to DA and OCC services pursuant to interconnection agreements, as described in Verizon's Checklist Declaration. (Verizon Ex. 2, ¶¶ 227-258).

No party claims that Verizon WV has failed to meet this checklist item. The Commission therefore concludes that Verizon WV satisfies Checklist Item 7.

Checklist Item 8: White Page Directory Listings

Section 271(c)(2)(B)(viii) of the Telecommunications Act requires Verizon WV to offer nondiscriminatory access to white pages directory listings. The FCC has explained that a "BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provide[s] nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provide[s] white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers." ⁸⁸

A. Evidence and Positions of the Parties

Verizon WV

As of March 31, 2002, Verizon WV's White Page database contained over 50,000 CLEC and Reseller listings. (Verizon Ex. 2, p. 98). The terms and conditions of the White Page Directory listings services that Verizon WV provides its retail customers are contained in Verizon WV's General Services Tariff P.S.C. – W.Va. - No. 203, Section 4. (Id., pp. 98-99). The terms and conditions of the White Page Directory listings services provided to CLECs are contained in numerous Commission-approved interconnection agreements. (Id., p. 99). All parties to the interconnection agreements are required to use commercially reasonable efforts to maintain an accurate listings database to ensure the accurate publication of CLEC end user White Pages listings. (Id.).

Verizon provides CLECs with documentation regarding the procedures for listing their customers in directories on the Verizon Wholesale web site. (Id., p. 101).

White Page Directories are published by Verizon Directory Services West Virginia Inc., an indirect wholly-owned subsidiary of Verizon Communications Inc., and one of a number of Verizon Information Services ("VIS") companies. (Id.). VIS distributes directories to Verizon WV and CLEC customers at exactly the same time and in exactly the same manner. (Id.).

⁸⁸ *Virginia Order*, App. C, ¶ 60 (citation omitted).

The process through which a CLEC obtains a White Page Directory listing for one of its customers is a multi-step process that includes the involvement of three separate entities, i.e. the CLEC, Verizon WV and VIS:

- Step 1: A CLEC orders the directory listing through a Local Service Request (“LSR”) submitted to Verizon WV through use of the Web GUI or the EDI [Electronic Data Interexchange] interface.
- Step 2: Verizon responds to the LSR with an LSR Confirmation sent back to the CLEC.
- Step 3: The LSR then goes to Verizon internal departments that complete work consistent with the LSR.
- Step 4: The LSR proceeds to the Directory Assistance database and separately to the Directory Listing publishing affiliate, VIS.
- Step 5: VIS subjects the LSR file to its own edits in order to update its database.

(Tr., Vol. 1, pp. 116-118 and 215-218).

After the LSR is completed, Verizon sends the CLEC a provisioning completion notice, and then after Verizon’s internal systems are updated, Verizon sends the CLEC a billing completion notice. Verizon explained that previously it had instructed CLECs “that it was a good idea to review the listing information that is returned on the confirmation and the billing completion notice to verify the listing information.” (Tr. Vol. 1, pp. 121-122). However, Verizon has now changed its instructions to CLECs and suggests that they wait until a few days after receiving the billing completion notice and then use a “directory listing inquiry transaction” to query the directory listings database to find out exactly how the listing appears. (Id., pp. 122-123).

At the hearing there was testimony regarding a potential Verizon WV charge to CLECs for each directory listing inquiry transaction they initiate. Verizon WV’s model interconnection agreement includes a per query charge. (Id, p. 124, Vol. 2, p. 22). Verizon WV testified that it considers the query a preorder transaction and does not charge for it, although it is permitted to charge. Verizon WV testified that it has asked for cost recovery on a per line basis rather than on a per query basis. (Tr., Vol. I, pp. 126-132).

Thirty days prior to the “service order close” date for a particular White Page Directory, VIS provides to each CLEC a Listings Verification Report (“LVR”) that contains all listings for the particular CLEC that are in the VIS database for publication in the upcoming directory. (Verizon WV Ex. 2, p. 100; Tr., Vol. 1, p. 219). The CLEC is then responsible to check, or verify, each of its listings in the LVR, and report mistakes back to Verizon. (Tr., Vol. 1, pp. 163-164). From January through March 2002, Verizon WV

provided 100% of directory LVRs at least 30 business days prior to the “service order close” date for the particular White Page directory. (Verizon Ex. 2, pp. 101-102).

The LVR does not reflect the listing in exactly the same format in which the information will appear in the directory. Verizon testified that there are abbreviation rules that may cause a change in the appearance of the listing between the LVR and the directory. (Tr., Vol. 1, pp. 220-221). Additionally, it is possible that the directory listing could change between the time that the LVR is issued to the CLEC and the directory is published. (Id., pp. 222-223).

Verizon WV has agreed to include Directory Listing metric OR-6-04 in the Carrier to Carrier Guidelines. OR-6-04 compares the LSR submitted by the CLEC to Verizon WV’s internal transactions created for Verizon WV’s service order processing systems. (Tr., Vol. 1, pp. 106-107; Verizon Ex. 12. ¶ 4.b). There are no current metrics that make a comparison to the VIS database. In Virginia, Verizon was required to conduct a six-month special study to compare the service orders in the OR-6-04 sample to the VIS database. (Id., p. 108; Joint Ex. 1, 4th Interim Workshop Report).

Directory listing issues were discussed at several of the workshops, including the 4th, 6th and 7th workshops. Both FiberNet and StratusWave provided examples of specific errors and problems related to directory listing for Verizon WV to investigate. (Joint Ex. 1.)

At the 7th Workshop Verizon WV provided a report on the directory listing issues set forth by the CLECs.⁸⁹ The report reflects that in response to the concerns expressed by the CLECs about inaccurate directory listings, Verizon WV contacted VIS and held publication of the next 4 upcoming books, which were Montgomery, Pt. Pleasant, Beckley and Morgantown. Of the 101 issues presented by FiberNet, 58 were in these four books. StratusWave’s 17 issues were all in the Wheeling book, which closed in June and had already been published. Thus, they could not be fixed before publication of the 2002 directory. Verizon WV also pulled another 220 LSRs with directory order activity in the 4 books for investigation.

The Report states that Verizon identified 114 listings from the FiberNet lists and the additional sample that would have been made in error if not corrected before publication. Verizon represented that of the 114 errors corrected, 66 would have been “severe” errors as follows: 14 would have affected the spelling of the finding name, 36 would have been omitted, 15 would have been published when the customer had requested non-published, and

⁸⁹ This information is also contained in Verizon Ex. 10A, ¶¶ 103-108, and was addressed in the hearing at Tr. Vol. 1, pp. 110 – 116, 157 – 161.

one would have resulting in the incorrect telephone number being listed. Other errors affected addresses, designations, appearance, etc.

Of the remaining FiberNet issues that affected directories other than the 4 noted, Verizon WV processed corrections for 28. Of the 28, 11 were “severe” errors as follows: two were errors in the finding name, eight would have been omitted, and one was an incorrect telephone number.

Verizon WV investigated the root cause of the errors and found that the top reasons in descending order for errors were NMC [National Market Center] Representative error, followed by ILEC system error, then VIS system/process error and CLEC error. Verizon WV also found that a VIS system defect affected 12 of the StratusWave issues, causing the listings to be erroneously omitted from the Wheeling directory. Verizon WV has taken several corrective actions to address these problems, including re-enforcement of NMC representative training, a change in the NMC work routing, completion of software corrections, and implementation of a VIS system fix.

FiberNet

FiberNet has testified that its customers have often been eliminated from the Verizon WV white pages directory, which has caused a significant adverse impact on such customers, and also on customers’ confidence in FiberNet. (FiberNet Ex. 1, p. 63). FiberNet explains that the processes that Verizon WV uses to input white page directory information differs depending on whether the customer is being served by the CLEC on a resale/UNE-P basis or on a UNE loop basis. If a CLEC serves a customer through resale of UNE-P, there is an order changing the service to the CLEC, but there is no physical disconnection of the established Verizon WV service, and the directory listing is not touched unless the customer requests a change to the current listing. However, where a CLEC serves a customer through its own switch, using Verizon WV’s loop, Verizon WV disconnects the retail service and eliminates the directory listing. Thus, the directory listing then has to be “restored” through the LSR process. (Id., pp. 64-65). FiberNet asserts that this process should be changed so that directory listings are not eliminated unless and until the CLEC requests that the information be removed or changed. (Id., pp. 65-66).

FiberNet stated that in its review of the LVRs it identifies numerous errors in the listing information. In 2002, of 4589 listings submitted, FiberNet identified 1229 listing errors in the LVRs, for an error rate of 27%. (Id., p. 68). FiberNet asserts that in light of so many errors, it has no choice but to double check data that was properly submitted to Verizon WV but, during the internal processing by Verizon, became inaccurate. (Id.). Thus, it becomes FiberNet’s responsibility to correct Verizon WV errors. (Id.). Finally, FiberNet has

no assurance that even after it identifies errors and reports them to Verizon WV the errors will be corrected and the listings properly included in the directory. (Id.).

During the very recent past that Verizon has begun “paying closer attention” to the directory listings, Verizon WV has started holding FiberNet orders apparently to ensure that the directory listing portion of the order is correct. (Id., p. 69). Although FiberNet appreciates Verizon WV’s attempt to review directory listings, Verizon must process FiberNet’s orders in a timely manner and holding the orders is not acceptable. (Id., pp. 69-70).

FiberNet testified that the KPMG test of Verizon’s systems in Virginia did not examine directory listings, and thus did not examine the accuracy of CLEC customer directory listings or whether or not the directory listings were actually inserted in the directory. (Id., p. 70).

FiberNet has had to add an additional employee just to deal with the LVR process and directory listing problems because they need attention on a daily basis. (Tr., Vol. 2, p. 151). FiberNet further testified that using the directory listing inquiry transaction process creates additional steps, and additional work, for FiberNet. (Id., p. 153). FiberNet testified that a new Web GUI system that Verizon put into place has caused numerous delays and difficulties for FiberNet, and after a training conference call given by Verizon, Verizon realized the system was not working and would not work for another several weeks. (Id., pp. 154-155).

AT&T

AT&T states that the significant directory listings errors described by the CLECs in West Virginia means that CLECs are receiving “discriminatory treatment because, in sharp contrast to Verizon's wholesale performance, Verizon's directory listing accuracy for its own retail operation is an outstanding model of nearly perfect performance.” (AT&T Ex. 1, pp. 13-14). AT&T cites an *ex parte* letter dated September 25, 2002, from Ann D. Berkowitz to Marlene H. Dortch filed in Verizon VZ-VA FCC 271 wherein Verizon VA reported publicly that its consumer relations group had only registered thirteen White Pages Directory Listing retail complaints, or approximately one per hundred thousand listings. (Id., p. 14).

AT&T further stated that Verizon WV claims it has no corresponding data on the accuracy of its Directory Listings, but concedes that the quality of its retail Directory Listings is high. (Id.)

AT&T criticized the KPMG testing of Verizon’s directory listings. AT&T asserted that KPMG did not directly test Directory Listings. Rather, KPMG simply checked the Verizon VA directory assistance database, assuming, without foundation, that all directory listing errors and omissions will concurrently occur in both directory assistance and directory

listings. (Id., p. 16; Tr., Vol. 1, p. 300). However, even KPMG found Verizon accuracy to only be 58.8% on its first test, and Verizon only attained a 94.7% accuracy rate falling short of the 95% benchmark. (Id.).

AT&T also testified concerning the OR-6-04 metric, pointing out that such metric compares the CLEC's LSR only to the next immediate step, the creation of the Verizon Service Order, and does not compare the LSR to VIS's (the directory publisher) database or compare the LSR to actual published listings. (AT&T Ex. 1, pp. 17-18). AT&T believes that the metric therefore "does not prove Verizon provides non-discriminatory Directory Listing performance to CLECs." (Id.).

AT&T stated that "the LVR process seeks to shift to the CLECs almost the entire responsibility of verifying the accuracy of Verizon's affiliate's directory listings database." (Id., p. 19). If Verizon makes an error converting the CLEC LSR to a service order, or an error when the service order is sent to VIS, that is Verizon's responsibility to detect and correct. (Tr., Vol. 2, pp. 34-35). Further, a CLEC is given only 30 days to verify and correct directory listings errors. Requests for earlier delivery of the LVR would "open wider the window for undetected post-LVR errors." (Id., pp. 35-36).

AT&T testified that it would like Verizon WV to place into writing its policy that it will not charge for a directory listing inquiry even though the charge is in the model interconnection agreement. (Id., p. 24). AT&T recommended that the Commission adopt the "no charge" policy as one of the conditions of any Section 271 approval. (Id., pp. 28, 71-72).

AT&T has further testified that Verizon's responsibility under the Act and Checklist Item 8 is to provide directory listings to CLECs without discrimination, "that is to publish the listing as Verizon's confirmation commits it to do, and with no further action or expense undertaken by the CLEC." (AT&T Ex. 1, p. 22).

StratusWave

StratusWave stated that Verizon WV failed to list 4 of 13 of StratusWave's "new" customers in the "214" exchange, and Verizon also failed to list the number of 35 out of approximately 100 StratusWave customers that have changed their service from Verizon WV to StratusWave. (StratusWave Ex. 1, p. 9). StratusWave also stated that Verizon WV's directory contains errors in the directory listings of 29 out of approximately 100 of StratusWave's customers, and that over 50% of StratusWave's directory listings were incorrect. (Id.). During the hearing, StratusWave agreed that the result of the directory listing errors was 58 errors out of 113 listings. (Tr., Vol. 2, p. 88).

StratusWave is not satisfied with Verizon WV's resolution of the problem, and that the improper directory listings has had a "significant effect on our business . . . [i]nsofar as the perception that it has created in the market place." (Id., p. 89).

StratusWave stated that the LVR is not a useful tool because the information in the LVR, given to StratusWave as a confirmation of what the listing will be, is not what shows up in the directory. (Id., p. 97).

Staff

Staff testified that the "process for adding and modifying CLEC phone book and Directory Assistance listings is cumbersome and prone to error." (Staff Ex. 1, p. 7). Staff stated that the difficulties the CLECs have in assuring directory accuracy is "especially troublesome because of the importance of complete and accurate directory listings, especially to businesses, and because of the fact that phone books are only published once per year." (Id.). Staff noted that the LVRs are in a format quite different from the format of the listings as they appear in the directory. (Id., p.8).

Staff further testified "[m]ore importantly, the intervention of the Verizon WV representative in the directory listing ordering process, appears to provide opportunities for inaccuracies in listings, which CLECs then have the burden of catching and correcting." (Id.). Staff concluded that "nondiscriminatory access to directory listings and Directory Assistance databases should include direct access, by the CLECs, to VIS . . . it is [not] competitively neutral to require CLECs to go through a Verizon WV 'middleman' in this process." (Id.).

Staff also expressed concerns in the following areas: (1) KPMG did not fully test directory listings in Virginia; (2) there is no metric measuring the end product of the directory listing process; and (3) Verizon WV's processes that require the CLECs to "police" Verizon WV's directory listings errors are inadequate and burdensome.

Staff recommended several corrective measures that Verizon WV should be ordered to undertake before the Commission certifies its compliance on this issue:

First, the Commission should initiate a general investigation and establish a work group to derive a metric measuring the accuracy of the information contained in the LVR to the information contained in the LSR/LSRC.

Second, the work group should develop, within 3 months, appropriate metrics for inclusion in the Carrier-to-Carrier Guidelines (C2C Guidelines) being proposed by Verizon.

Third, any metric with a performance standard associated with it, benchmark or parity, established by the work group should be incorporated in the Critical Measures portion of the proposed Performance Assurance Plan (PAP). In Staff's opinion, this will supply the necessary inducement for Verizon to introduce systems improvements that reduce the rate of Verizon-generated errors in the directory listings database.

Fourth, as an alternative to establishing a metric, the work group may propose processes whereby CLECs can interface with VIS in order to submit their LSRs to VIS directly. If such direct interface is established, Staff recommends that, after a trial period – 6 months for example, the additional directory listings metrics developed by the work group could be proposed to be removed.

CAD

The Commission should make every effort to ensure that directory listing errors are minimized to the extent possible. The CAD recommends that the Commission condition approval of Verizon's application on compliance with commitments previously made to include new directory ordering metrics, and on future development of metrics to address directory listing accuracy.

CAD noted that as part of the Joint Stipulation, Verizon WV also agreed to make metric OR 6-04 available in West Virginia. (Verizon Ex. 12, ¶ 4.b.). Metric OR 6-04 was not originally included in the carrier-to-carrier metrics or monthly reports proposed in West Virginia. Under Verizon's new proposal, OR 6-04 will be used for monitoring purposes only, and will not be included in the PAP as a performance benchmark. The CAD recommends that the Commission condition approval of Verizon WV's application on inclusion of Metric OR 6-04 in the Carrier-to-Carrier Guidelines with an initial 95% flow-through benchmark which rises to 98% over a three-year period. (Tr. Vol. 2, p. 232).

CAD also noted that the Virginia and Pennsylvania Commissions have instituted special proceedings to track directory listing accuracy. The Pennsylvania Commission has established tracking or diagnostic metrics for white pages directory listings. The Pennsylvania Commission also established a process of evaluation of these metrics that could lead to the addition of a benchmark to the Performance Assurance Plan for directory listing accuracy.⁹⁰

⁹⁰ *Re: Performance Measures Remedies*, Docket No. M-00011468, "Motion of Vice Chairman Robert K. Bloom" (Pennsylvania PUC Nov. 21, 2002).

CAD recommended that the Commission direct Staff to monitor or join the directory metrics proceedings in Pennsylvania. Following a report on the Pennsylvania actions, the Commission should consider requiring Verizon WV to meet with the West Virginia working group to develop metrics relating to the ultimate accuracy of white page directory listings. Verizon WV should be required to report back to the Commission on these directory accuracy metrics. Following adoption of any directory accuracy metric or metrics, the Commission should then consider whether to add those metrics to the Performance Assurance Plan under the normal PAP change process.

B. Discussion

AT&T, FiberNet, StratusWave and Staff have raised concerns regarding Verizon WV's compliance with this checklist item, including specific claims some carriers raised during the Commission-mandated workshops. Verizon WV counters by pointing out that the systems and processes that these carriers contend are unacceptable are precisely the same systems and processes that the FCC has already reviewed and approved.

The Commission finds, as Verizon WV itself admits, that the directory listing process is not perfect.⁹¹ However, the Commission also finds that Verizon WV uses the same directory listing procedures in West Virginia as it does in Virginia, which the FCC has reviewed and found to satisfy the requirements of the Act. *See Virginia Order* ¶¶ 152-171. As did the FCC, this Commission takes comfort in the fact that Verizon WV has “implemented numerous system improvements that demonstrate Verizon WV’s ability to provide nondiscriminatory access to directory listings,” that Verizon “has taken the necessary steps to mitigate” past problems, “and has demonstrated a commitment to fix any unanticipated future problems that may arise.” *Virginia Order* ¶ 153.

In particular, as the FCC recently concluded, these additional steps have remedied any past problems and ensure that Verizon “is currently providing directory listings on a nondiscriminatory basis.” *Virginia Order* ¶ 156. Specifically, Verizon has (1) instituted a quality verification check on all LSRs manually adjusted by Verizon; (2) undertaken several system modifications to improve accuracy and flow-through of directory listing LSRs; (3) implemented a measurement (OR-6-04) that tracks the accuracy of manual entries performed by Verizon; (4) modified the Listing Verification Report (“LVR”) that Verizon provides to CLECs in ways that make this report, in the words of the FCC, “more accurate and accessible” *Virginia Order* ¶ 156; and (5) provided CLECs with training and other educational opportunities regarding the directory listings process.⁹²

⁹¹ Verizon Ex.10A, ¶ 75.

⁹² Verizon Ex. 10A, ¶¶ 89-99.

In addition, as Verizon did in Virginia, Verizon WV has committed to implement a Carrier-to-Carrier measure of the accuracy of the manual work performed to translate listing information from CLEC local service requests (“LSRs”) to internal Verizon service orders.⁹³

This measure (OR 6-04), which was first introduced in Virginia, takes a random sample of “listing affecting” LSRs and compares the information on the LSR to the service order.⁹⁴ Currently, this measure is only reported in Virginia; however, since the systems and processes in West Virginia and Virginia are the same, the results in West Virginia should be similar to those in Virginia, where Verizon has been granted Section 271 relief.⁹⁵

Based on the concerns raised over directory listings in this proceeding, and based on the adoption of OR 6-04 in Virginia, the Commission will order Verizon WV to adopt OR 6-04 in its Carrier-to-Carrier guidelines, effective with the data month of December 2002 or as soon thereafter as possible.

While the Commission concludes that Verizon WV satisfies Checklist Item 8, this does not complete the Commission’s analysis of this issue. The record in this proceeding reveals that Verizon WV has complex procedures for modifying directory listings that has led to numerous complaints from competitors. While the process itself appears to be non-discriminatory, and Verizon WV has taken actions to remedy problems, the complexity of the process is inherently confusing and lends itself to errors. While errors in any process are inevitable, the impact of a directory listing error can be devastating to a competitor or the competitor’s customer.

The quarterly Staff-supervised business-to-business meetings between Verizon WV and CLECs should create a forum for the Staff and the industry to continue to exchange information and to track progress on directory listings issues. Further, any party remains free to raise the matter during the quarterly meetings, and if necessary, to petition the Commission for relief.

Nonetheless, the Commission agrees with Staff and CAD that additional Commission action on the directory listing process is warranted. The previously established work group shall: (1) develop a metric measuring the accuracy of the information contained in the LVR to the information contained in the LSR/LSRC; (2) develop appropriate metrics for inclusion in the C2C guidelines; (3) address whether any metric ultimately developed should be included in the Critical Measures portion of the PAP; and (4) determine whether, as an alternative to adoption of metrics, that a process for CLECs direct interface with VIS should

⁹³ *Virginia Order* ¶160. Verizon Ex. 10A, ¶ 93.

⁹⁴ Verizon Ex. 10A, ¶ 93.

⁹⁵ *Id.* Verizon’s performance in Virginia is at 99.25 and 98.79 percent for July and August 2002, respectively.

be established. The structure for reporting back to the Commission shall be the same as that outlined in the “no facilities” discussion contained above in Checklist Item 4. In order to avoid unnecessary duplication of effort, the Commission recommends that Staff and the working group monitor the ongoing proceedings on this topic that are being conducted by the Pennsylvania Commission.

Finally, AT&T expressed concern that Verizon WV may begin implementing a “per dip” or per inquiry directory systems inquiry charge, where permitted to do so under applicable interconnection agreements. The Commission understood Verizon WV’s position to be that it was not charging for the inquiry and had no current plans to assess the charge. However, if and when Verizon WV ever intends to do so, Verizon WV shall make an appropriate filing with the Commission for approval.

C. Conclusion

Based upon the foregoing, the Commission concludes that Verizon WV meets the requirements of Checklist Item 8.

Checklist Item 9: Access to Telephone Numbers

Section 271(c)(2)(B)(ix) of the Act requires Verizon WV to comply with telecommunications numbering administration guidelines, plans and rules concerning access to telephone numbers.⁹⁶ As described in Verizon’s Checklist Declaration, Verizon WV meets this checklist requirement by complying with industry numbering administration guidelines and FCC rules regarding access to telephone numbers. *See* Verizon Ex. 2, ¶¶ 273-278.

North County is the only party to contend that Verizon WV has failed to meet this checklist item. (North County Ex. 2, pp. 25-34). However, North County’s claim has nothing to do with Verizon WV’s compliance with the industry guidelines and procedures for access to telephone numbers. North County’s claim relates to how 555 traffic should be treated for intercarrier compensation purposes. The assignment of 555 numbers is the responsibility of the North American Numbering Plan Administrator (“NANPA”), not Verizon WV. Moreover, North County’s claim is the subject of a pending complaint

⁹⁶ Section 271(c)(2)(B)(ix) of the Act requires Verizon WV to provide nondiscriminatory access to telephone *numbers* for assignment to other carriers’ customers until the date that numbering administration guidelines, plan or rules are established, and to comply with such guidelines, plan or rules after that date. *See Virginia Order*, Appendix C, ¶ 61. Responsibility for assignment of telephone numbers has been transferred from Verizon WV to an independent third-party administrator. *See* Verizon Ex. 2, ¶ 273. Verizon WV therefore meets this checklist item by complying with the industry guidelines and procedures for access to telephone numbers that apply to all carriers.

proceeding and will be resolved there. *See* P.S.C. Case No. 02-0254-T-C, *North County Communications Corporation v. Verizon West Virginia, Inc.* The FCC has observed that “the section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC’s obligation to its competitors.” *See, e.g., Pennsylvania Order*, ¶ 101.

The Commission concludes that Verizon WV satisfies Checklist Item 9.

Checklist Item 10: Access to Databases and Signaling

Section 271(c)(2)(B)(x) requires Verizon WV to provide competitors with access to databases and signaling necessary for call routing and completion. As described in its Checklist Declaration, Verizon WV provides nondiscriminatory access to database and associated signaling necessary for call routing and completion. *See* Verizon Ex. 2, ¶¶ 279-317. No party challenges Verizon WV’s demonstration that it complies with this checklist item.

Accordingly, the Commission concludes that Verizon WV satisfies Checklist Item 10.

Checklist Item 11: Local Number Portability

Section 271 (c)(2)(B)(xi) of the Act requires Verizon WV to comply with FCC rules regarding local number portability (“LNP”).⁹⁷ Verizon WV provides LNP pursuant to interconnection agreements, as described in its Checklist Declaration. *See* Verizon Ex. 2, ¶¶ 318-322.

No party contends that Verizon WV fails to comply with this checklist item. The Commission accordingly concludes that Verizon WV satisfies Checklist Item 11.

Checklist Item 12: Local Dialing Parity

Section 271(c)(2)(B)(xii) of the Act requires Verizon WV to provide nondiscriminatory access to the services and information necessary to allow competing

⁹⁷ Section 271 (c)(2)(B)(xi) of the Act requires “[u]ntil the date by which the [FCC] issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of *functioning*, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.” Number portability is defined in Section 3(30) of the Act as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” *See Virginia Order*, Appendix C, ¶ 63.

providers to implement local dialing parity in accordance with the requirements of Section 251(b)(3) of the Act. “Dialing parity” is defined by the Act to mean that a CLEC

that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation from among 2 or more telecommunications services providers (including such local exchange carrier).⁹⁸

Section 251(b)(3) requires Verizon WV:

to provide dialing parity to competing providers of telephone exchange service and . . . to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

Although acknowledging that local dialing parity has not been in dispute in any recent Section 271 proceedings,⁹⁹ FiberNet and StratusWave maintain that Verizon WV is not in compliance with Checklist Item 12. This is because FiberNet and StratusWave have had to purchase cross-LATA interstate facilities or use the services of another carrier in order to provide locally rated interstate interLATA calling for certain of their West Virginia customers to ILEC customers in Ohio, Pennsylvania, or Virginia, to which Verizon WV offers local-rated calling to its own customers.

It is undisputed that this issue “does not come into play in situations in which the CLEC customers are being served as a resale or UNE-Platform basis.”¹⁰⁰ In those situations, the interLATA “local” calls are routed over the trunks that Verizon WV has established between its switch and the switch of another ILEC in the other LATA. The problem occurs when a CLEC uses its own switch. Verizon WV maintains that, in the latter situation, the CLEC is responsible for establishing its own trunks to the ILEC switch in the other LATA, in accordance with the Local Exchange Routing Guide (“LERG”) and for making arrangements to interconnect with the other ILEC, such as Ameritech in Ohio, including entering into an interconnection agreement with that ILEC.¹⁰¹ Verizon WV argues that this

⁹⁸ 47 U.S.C. § 3(15).

⁹⁹ See, FiberNet Ex. 1, p. 79; StratusWave Ex. 1, ¶ 23.

¹⁰⁰ FiberNet Ex. 1 at 80, n. 25. Tr., Vol. 3, pp. 278-279.

¹⁰¹ Verizon Ex. 8A, ¶¶ 140-147. Tr. Vol. 3, p. 245. Verizon WV also asserts that FiberNet wants Verizon WV to route this traffic and make interconnection arrangements for free. Id., ¶ 141.

was the technical solution to which Verizon WV, the CLECs, and the Commission Staff agreed over twenty months ago.¹⁰²

¹⁰² Verizon Ex. 8A, ¶¶ 143-145.

In contrast FiberNet argues that, in this situation, the CLEC should not have to do the “heavy lifting” with Ameritech or the other ILEC in the other LATA, and implies that Verizon WV should devise another way to route the CLEC interLATA traffic.¹⁰³ FiberNet acknowledges that it agreed to the solution in question, but argues that, at the time, it had no other viable alternative.¹⁰⁴ StratusWave also identifies the interLATA calling issue to be a problem, but offers no specific alternative solution.¹⁰⁵

The Commission concludes that neither the Act nor any FCC rule or decision requires that an ILEC, such as Verizon WV, do the “heavy lifting” for the CLEC in negotiating interconnection agreements with other carriers on the other side of the LATA boundary in another state. Section 271(c)(2)(B)(xii) of the Act provides that an ILEC must provide “[n]ondiscriminatory access to such *service or information* as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3).” Verizon WV provides the customers of CLECs that purchase unbundled local switching, or that resell Verizon WV service, with the same cross-LATA dialing capabilities as those afforded Verizon WV’s retail customers. In those instances where CLECs, such as FiberNet and StratusWave, provide their own switches, Verizon WV fulfills its obligations under the Act by providing the information and services necessary for the CLEC to implement local dialing parity on its own switch.¹⁰⁶ It is then the CLEC’s responsibility to program its switch accordingly and to make arrangements to interconnect with other carriers.

For the above reasons, the Commission concludes that Verizon WV satisfies Checklist Item 12.

Checklist Item 13: Reciprocal Compensation

Section 271 (c)(2)(B)(xiii) of the Act requires Verizon WV to offer access and interconnection that includes reciprocal compensation arrangements in accordance with Section 252(d)(2). Section 252(d)(2) requires reciprocal compensation arrangements that provide for mutual and reciprocal recovery of costs associated with the transport and termination on one carrier’s network of calls that originate on the network of another carrier. *Virginia Order*, Appendix C, ¶ 66.

¹⁰³ FiberNet Ex. 1, p. 82.

¹⁰⁴ *Id.*, p. 83.

¹⁰⁵ StratusWave Ex. 1, pp. 9-10.

¹⁰⁶ Verizon Ex. 2, ¶ 324.

A. Evidence and Positions of the Parties

Verizon WV

Verizon WV noted that the FCC has held that traffic bound for the Internet, and other types of traffic excluded by Section 251(g) are not subject to reciprocal compensation. (Verizon Ex. 2, p. 120). Verizon WV also contended that it offered reciprocal compensation to CLECs for the termination of traffic from Verizon WV customers that is subject to reciprocal compensation under the Act. (Id., at p. 121). Conversely, these arrangements obligate CLECs to compensate Verizon WV for completing traffic from CLEC customers. (Id.).

Moreover, Verizon WV stated that it has complied with all rulings of the West Virginia Commission that have addressed the issue of reciprocal compensation. In fact, prior to the FCC's Inter-Carrier Compensation Order, Verizon WV pointed out that the Commission had itself held that reciprocal compensation requirements do not apply to Internet-bound traffic, and adopted a presumption that traffic exceeding a 3:1 ratio was Internet-bound traffic.¹⁰⁷ Thus, unless a CLEC has provided information showing that this presumption does not apply, or unless otherwise provided under the parties' interconnection agreement, Verizon WV applies the 3:1 ratio. (Verizon WV Ex. 2, p. 121). Accordingly, to the extent that Verizon WV exchanged Internet-bound traffic and traffic properly subject to the receipt of reciprocal compensation under the Act, Verizon WV indicated that it paid reciprocal compensation to CLECs based on minutes of traffic, up to three times the minutes of traffic received from the respective CLEC. (Id., pp. 121-122). As of March 31, 2002, Verizon WV stated that it was paying reciprocal compensation to five CLECs, 10 broadband Commercial Mobile Radio Service providers, and one paging company. (Id., p. 122).

AT&T

AT&T indicated that in its *Inter-Carrier Compensation Order* issued in April 2001, the FCC established a rebuttal presumption that, for the future, all traffic above a 3:1 terminating to originating ratio is presumed to be Internet-bound traffic subject to an interim transitional compensation mechanism. (AT&T Ex. 1, p. 38). Under the *Inter-Carrier Compensation Order*, AT&T further indicated that compensation for Internet service provider-bound traffic will be capped at a minute-of-use rate that will gradually decline over a 36-month period. (Id.). AT&T questioned whether Verizon WV was in fact complying with the requirements of the FCC's *Inter-Carrier Compensation Order*.

¹⁰⁷ See, Commission Orders, Case No. 99-0426-T-PC (October 19, 1999, and December 9, 1999).

AT&T takes issue both with Verizon WV's failure to explain what it means by traffic "properly subject to reciprocal compensation under the Act," and what Verizon WV means when it states that it will apply the FCC mandated ratio only if "required by an interconnection agreement to pay reciprocal compensation on local traffic." AT&T concludes that Verizon WV continues to pay zero compensation notwithstanding the clear language in the FCC's *Inter-Carrier Compensation Order*. (AT&T Ex. 1, pp. 38-39). Unless and until Verizon WV reverses course and consistently complies with the orders of the Commission and the FCC regarding its obligation to pay reciprocal compensation in West Virginia, AT&T opines that Verizon WV cannot be found to be in compliance with Checklist Item 13. (Id., p. 39).

FiberNet

FiberNet raised two issues with respect to Verizon WV's compliance with Checklist Item 13. First, FiberNet asserted that Verizon WV is avoiding its obligation to comply with the reciprocal compensation requirements of the Act by using the GRIPs or VGRIPs interconnection strategy in order to avoid paying for the transport of its traffic when utilizing the network and transport facilities of a CLEC to complete the further transport of its traffic. (FiberNet Ex. 1, p. 84). Second, FiberNet asserted that Verizon WV was not complying with the spirit of the Commission's orders in Case No. 99-0426-T-P due to its failure to negotiate in good faith regarding compensation for traffic exceeding the 3:1 ratio at the interim compensation rates established by the FCC in the aforementioned *Inter-Carrier Compensation Order*. (Id.).

FiberNet indicated that it had been trying for a number of months to seek payment for those reciprocal compensation minutes that exceed the 3:1 ratio at the interim compensation rates established by the FCC in the *Inter-Carrier Compensation Order*. Since the FCC's Order was not self-executing, FiberNet pointed out that it was required to negotiate with Verizon WV so as to properly amend its current interconnection agreement to provide for the payment of reciprocal compensation for the traffic exceeding the 3:1 ratio at the FCC's interim transitional rates. However, FiberNet asserted that Verizon WV has both refused to compensate FiberNet for these excess minutes (minutes exceeding the 3:1 ratio) as prescribed by the FCC, and refused to negotiate any alternative method for compensation for these excess minutes. (FiberNet Ex. 1, pp. 84-85). FiberNet further opined that Verizon WV's refusal to negotiate on this issue was in violation of the Commission's orders in Case No. 99-0426-T-P.

FiberNet argued that Verizon WV should either be required to negotiate an alternative mechanism for compensation for the minutes exceeding the 3:1 ratio or be required to adopt the interim compensation mechanism established by the FCC for the minutes exceeding the 3:1 ratio. Unless and until Verizon WV was made to comply with the applicable orders of

both the Commission and the FCC, FiberNet concluded that Verizon WV could not be deemed to be in compliance with the requirements of Checklist Item 13. (FiberNet Ex. 1, p. 86).

Staff

Staff agrees with Verizon WV that payment for Internet-bound traffic is not a basis for a finding of checklist noncompliance. However, Staff believes that Verizon WV has misconstrued the FCC's *Inter-Carrier Compensation Order* and is in violation of that order. On that basis, Staff recommends that the Commission find that Verizon WV's practices in that regard are unreasonable under *W. Va. Code* § 24-2-7.

CAD

CAD is of the opinion that the reciprocal compensation issues raised by the CLEC's should be resolved by the Commission on a case by case basis.

Verizon WV Rebuttal

With regard to proper implementation of the FCC's *Inter-Carrier Compensation Order*, Verizon WV asserts that it has implemented the 3:1 ratio and other provisions of the Order in the same manner that it has been implemented throughout the Verizon East jurisdictions, including states in which Verizon has been authorized to provide competitive long distance service. (Verizon Ex. 8A, p. 68).

According to Verizon WV, the transitional compensation plan under the FCC's *Inter-Carrier Compensation Order* was a mechanism to transition carriers from arrangements that required payment of Internet-bound traffic to arrangements that did not require payment of reciprocal compensation for that traffic. (Verizon Ex. 8A, p. 69). Because FiberNet was not entitled under this Commission's orders to receive reciprocal compensation on Internet-bound traffic prior to the *Inter-Carrier Compensation Order*, Verizon WV argued that there was no need for such a transition and the transitional compensation plan of the FCC therefore did not apply. (Id.).

With regard to FiberNet's contention that Verizon WV has failed to negotiate an alternative compensation mechanism for Internet-bound minutes exceeding the Commission established 3:1 ratio, Verizon WV stated that it had no record of FiberNet ever having made such a negotiation request. (Verizon WV Ex. 8A, p. 69). Moreover, Verizon WV stated that FiberNet has not requested that the Commission arbitrate this particular issue. (Id., p. 70).

In responding to AT&T's assertions, Verizon WV again asserted that it has properly implemented the provisions of the FCC's *Inter-Carrier Compensation Order*. Accordingly, Verizon WV argues that AT&T's claims regarding reciprocal compensation should not be addressed in this proceeding, and if they are, Verizon WV argues that AT&T's claims should be rejected. (Verizon Ex. 8A, pp. 70-71).

B. Discussion

Section 271(c)(2)(B)(xiii) requires Verizon WV to offer reciprocal compensation arrangements as required by the Act. Reciprocal compensation arrangements are agreements between interconnecting carriers regarding the charges that each carrier will apply for the transport and termination of certain telecommunications traffic of the other carrier.¹⁰⁸

FiberNet and AT&T contend that Verizon WV does not meet this checklist item because Verizon WV allegedly does not pay reciprocal compensation on Internet-bound traffic as required by the FCC.¹⁰⁹

The FCC adopted a 3:1 rebuttable presumption similar to the 3:1 ratio adopted nearly two years previously by this Commission, whereby traffic that exceeds that ratio is not subject to reciprocal compensation payments absent a showing that the traffic is not Internet-bound.¹¹⁰ The procedures established by this Commission allow CLECs an opportunity to show that large one-way traffic volumes on their systems are not Internet traffic. Furthermore, we provide for alternative cost-based compensation for Internet-bound traffic on a case by case basis.

More important to the Commission's determination in the present proceeding, the FCC has consistently held that whether a BOC pays reciprocal compensation for Internet-

¹⁰⁸ See CC Docket Nos. 96-98 and 95-185, *First Report and Order*, FCC 96-325, released August 6, 1996, ¶¶ 1033-1045.

¹⁰⁹ FiberNet Ex. 1, pp. 83-86; AT&T Ex. 1, ¶¶ 76-80.

¹¹⁰ See CC Docket Nos. 96-98 and 99-68, *Order on Remand and Report and Order*, FCC 01-131, released April 27, 2001, ¶ 8, 78 (*Order on Remand*). See also Commission Order, Case No. 99-0426-T-PC (October 19, 1999); Commission Order, Case No. 99-0426-T-PC (Re-opened) (December 9, 1999).

bound traffic is “irrelevant to checklist item 13.”¹¹¹ The Commission therefore concludes that the disputes of FiberNet and AT&T regarding reciprocal compensation for Internet-bound traffic are irrelevant to Checklist Item 13. If those parties wish to raise those disputes with the Commission in an appropriate proceeding, they are free to do so.¹¹²

The Commission accordingly concludes that Verizon WV satisfies Checklist Item 13.

Checklist Item 14: Resale

Section 271(c)(2)(B)(xiv) of the Act requires Verizon WV to make telecommunications services available for resale in accordance with the requirements of Section 251(c)(4) and 252(d)(3). Section 251(c)(4)(A) requires Verizon WV “to offer for resale at wholesale rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers.” Section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on resale. Section 252(d)(3) sets forth the methodology for determining “wholesale rates.”

It is undisputed that, as of March 2002, the Commission has approved and is reviewing for approval approximately 30 resale-only interconnection agreements and approximately 30 facilities-based interconnection agreements, many of which include resale provisions, between Verizon WV and CLECs. (Verizon Ex. 2, ¶ 337).

It likewise is undisputed that Verizon WV is providing resale services in commercial volumes. As of the end of March 2002, there were approximately 14,000 resold lines in service in West Virginia, of which approximately 9,600 were business lines and approximately 4,400 were residence lines. (Id., ¶ 338).

No party challenges Verizon WV’s compliance with Checklist Item 14. Based on the evidence that Verizon WV has submitted, the Commission concludes that Verizon WV satisfies Checklist Item 14.

II. PUBLIC INTEREST

Section 271(d)(3)(C) imposes an obligation on the FCC to make a determination that the granting of Section 271 approval is in the “public interest.” In order to make this determination the FCC assesses whether the record as a whole shows that the local telecommunications market is irrevocably open to competition, and whether any other relevant factors exist which would frustrate the Congressional intent to open local markets.

¹¹¹ See *New Jersey Order*, ¶ 160; *Pennsylvania Order*, ¶ 119; *New York Order*, ¶ 377.

¹¹² See *Order on Remand*, ¶ 8.

A. Public Interest Test

An integral part of any public interest test is a look at the bottom line – the actual level of local competition in West Virginia. While the parties have different opinions on the same numbers, there is no doubt that there is currently a low but measurable level of overall local competition in West Virginia, mostly related to business service. Almost all of the local competition that does exist is facilities-based competition. Updated data through August 2002 shows that over two-thirds of the 44,100 lines held by competitors were served by facilities provided at least in part by CLECs. Resale and UNE-P service, which rely entirely on the existing facilities of Verizon, account for the remaining one-third of lines held by competitors.

Total lines served by CLECs amounted to 5.1% of the local exchange market in Verizon WV's service territory at the end of August, up from 4.2% at the end of March. Business lines accounted for 82% of the CLEC market share. In spite of the current relatively low level of competition, it appears that the local market is open, that Verizon is provisioning wholesale service requests on a reasonable and non-discriminatory basis, and that CLEC market share is growing. The reductions in UNE rates which will result from the Joint Stipulations submitted in this proceeding and the Gap/Remand/Merger proceeding should encourage new CLECs to enter West Virginia and existing CLECs to enter new market areas. Moreover, the prospect of Verizon being able to enter the long distance market in West Virginia in the second quarter of 2003 should encourage CLECs to step up competitive activity. Accordingly, we find that it is in the public interest to move forward and allow competition CLECs and Verizon may offer both local and long distance telecommunication services to West Virginia customers.

B. Performance Assurance Plan

1. Carrier-to-Carrier Guidelines

The C2C Guidelines proposed by Verizon WV include performance measurements, standards and reports that will allow the Commission, the CLECs and Verizon WV to monitor the timeliness, reliability and quality of Verizon WV's wholesale service performance. (Verizon Ex. 3, ¶¶ 6, 9-104). The C2C Guidelines include more than 500 disaggregated submetrics, measuring performance in seven key categories: Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, Network Performance, Billing, and Operator Services and Directory Assistance. (Id., ¶¶ 17-18).

The proposed C2C Guidelines are the same as the New York Guidelines in effect as of May 2002, with only those modifications that are necessary to address differences in West

Virginia systems and processes, and the addition of metric OR-6-04, % Accuracy – Directory Listing. (Id., ¶ 6; Verizon Ex. 9, ¶¶ 22-23). Guidelines based on the New York Guidelines have already been adopted in Virginia, the District of Columbia, Maryland, Delaware, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire and Maine. (Verizon Ex. 3, ¶ 6). Verizon has already been authorized to provide competitive long distance service in New York and eight of the states that use the New York Guidelines, and no party challenged the Virginia metrics in the recent FCC 271 proceeding. *See Virginia Order*, ¶ 198.

Eight of the states that have adopted Guidelines based on New York have also adopted provisions to update their Guidelines based on modifications subsequently made in New York. (Verizon Ex. 3, ¶ 7). Verizon WV has proposed that the Commission adopt the following process for updates to the Guidelines after the Guidelines have been adopted by the Commission:

- Verizon WV shall file with the Commission the New York consensus¹¹³ and/or non-consensus¹¹⁴ metric change(s) and proposed implementation interval(s), including an explanation of time required to implement, and description of the changes made to adapt to West Virginia systems. Such filings shall be within 30 calendar days of the submission date of the compliance filing in New York.¹¹⁵
- With each such filing, Verizon WV may submit to the Commission any opposition to adoption of any metric change(s). Verizon WV shall set forth its reasons for opposition in any such filing.
- Verizon WV shall make an electronic copy of its filing on the proposed consensus and/or non-consensus change(s) available to the Commission Staff, the Consumer Advocate Division and any CLEC that notifies Verizon WV in writing that it would like to receive such filings.

¹¹³ A consensus decision is a change to the New York Guidelines that has been agreed to (or not opposed) by the parties in the New York Carrier Working Group and has been approved by the New York Public Service Commission. *See* Verizon Ex. 3, ¶ 7.

¹¹⁴ A non-consensus decision is a change to the New York Guidelines that has been approved by the New York Public Service Commission, but not agreed to by all parties in the New York Carrier Working Group. *See* Verizon Ex. 3, ¶ 7.

¹¹⁵ The compliance filing in New York is the filing by Verizon New York with the New York Public Service Commission of revisions to the New York Guidelines that contain metric changes that have been approved by the New York Public Service Commission. *See* Verizon Ex. 3, ¶ 7.

- The Commission Staff, Consumer Advocate Division and interested parties shall have an opportunity to comment and/or request a hearing on the proposed metric change(s) submitted by Verizon WV. Such comments are not limited to, but should address whether the metric change(s) appropriately adapts the New York metric to West Virginia and on the proposed implementation interval(s). Verizon WV and others that did not object to a metric change(s) or proposed implementation interval(s) shall be provided an opportunity to respond if anyone objects to the adoption of the change(s) or implementation interval(s).
- If neither the Commission Staff, Consumer Advocate Division, nor any interested party, including Verizon WV, has objected to the adoption of a proposed consensus or non-consensus metric change(s) after the Commission has provided an opportunity for comment, the change should be considered approved forty-five days after submission of the filing, unless otherwise ordered by the Commission.

These provisions do not preclude the Commission or any other party from proposing modifications to the Guidelines in accordance with the Commission's rules of practice. (Verizon Ex. 3, ¶ 7). FiberNet has asked that any changes to the C2C Guidelines not take place without affirmative Commission action. The Commission concludes that such a requirement will result in unnecessary Commission intervention in proposed changes to which there is no objection. The process outlined above provides any interested party the opportunity to object to proposed changes. Thus, only when objections are raised will the Commission be required to take action regarding a proposed change.

OR-6-04 is the same metric that has been adopted in Virginia, Maryland, the District of Columbia and New Hampshire. The metric will be implemented in West Virginia on the same schedule as Virginia, and Verizon WV intends to report results beginning with the December data month. As recommended by Verizon and CAD, the Commission shall direct that a performance benchmark of 95% shall be established for this metric for 2003. The performance benchmark shall rise 1% per year for three years to be 98% for 2005. (Tr., Vol. 2, pp. 265-267).

Verizon's proposed billing metrics are based on industry consensus reached in the New York Carrier Working Group, and measure the same aspects of billing performance that are now measured in ten Verizon jurisdictions. The proposed billing metrics include measures of Verizon WV's timeliness in acknowledging and resolving billing claims (BI-3-04 and BI-3-05, respectively). BI-3-04 and BI-3-05 are currently in effect in New York on a trial basis, and have been included in the West Virginia Guidelines on an interim basis pending the outcome of the New York trial. The New York Commission has proposed to

include placeholders for these billing metrics in the New York performance assurance plan, with metrics to be included in the PAP once the metrics are finalized. As provided by the proposed PAP that is discussed below, if changes are made to the New York performance assurance plan, Verizon WV will submit the changes to this Commission for consideration. (Verizon Ex. 9, ¶ 24; Tr. Vol. 2 pp. 269-270).

AT&T and FiberNet request that the Commission direct full replication of Verizon WV's metrics reports. Replication by a State is not a prerequisite to 271 authority in that state. KPMG testified in Maryland that it has replicated metrics in the equivalent of 29 states, and that the "vast majority" of those state commissions have not continued full replication after KPMG's test. (Joint Exhibit 3, p. 1378) Moreover, as KPMG explained, full metrics replication is not necessary to ensure accuracy, and "a sampling technique would provide the same level of assurance." (Id., pp. 1378-1383). A full replication was performed by KPMG in Virginia, and Verizon uses the same procedures and underlying systems to prepare performance reports for West Virginia. The Virginia Commission has continued to replicate reported results on a monthly basis since the data month of January 2002. (Tr., Vol. 2 pp. 305, 307-308).

Full replication is complex and time-consuming, and would place an unnecessary burden on the Commission's resources. Additionally, the Commission is not convinced that replication will provide a benefit that will justify the associated costs. The Commission notes that the PAP provides for annual audits of Verizon WV's data and data reporting, including data reliability issues. The Commission concludes that it is not necessary, at this time, to order replication of Verizon WV's metrics reports. However, the Commission may re-examine this issue if actual experience or an audit reveals issues that warrant a change in this position.

FiberNet and Staff have asked the Commission to impose a requirement upon Verizon WV for the refile of corrected performance reports. Verizon typically does not refile corrected reports. (Tr., Vol. 3, p. 16). The Commission concludes that such a requirement is reasonable and not unduly burdensome. Accordingly, Verizon WV shall be required to file corrected performance reports within 30 days of discovery of any error in a previously provided report.

Verizon WV's current policy is to retain C2C reports for five years. (Tr. Vol. 3, p. 18). If Verizon WV reduces this document retention period in the future, Staff requests that Verizon WV be required to seek Commission approval. In approving the C2C guidelines, the Commission is relying upon the fact that the C2C reports are retained by Verizon WV for five years. Any change in the retention policy should not be made unilaterally by Verizon WV. Accordingly, Verizon WV shall be required to seek Commission approval prior to making any change in its C2C report document retention policy.

For the foregoing reasons, the Commission concludes that the proposed C2C Guidelines, with the addition of OR-6-04, provide a comprehensive set of measures that will enable the Commission and the parties to monitor Verizon WV's wholesale performance.

The C2C Guidelines, with the addition of OR-6-04 and the performance benchmark set forth above, are accordingly adopted. To ensure that the C2C Guidelines remain current, and to secure the benefits in West Virginia of the work of the on-going industry collaborative in New York, the Commission also adopts the proposed process for updating the C2C Guidelines. Additionally, Verizon WV shall be required to file corrected performance reports within 30 days of discovery of any error in a previously provided report and shall seek Commission approval prior to making any change in its C2C report document retention policy.

2. Performance Assurance Plan

With the exception of the effective date, the proposed West Virginia PAP has been agreed to by Verizon WV and AT&T.¹¹⁶ The West Virginia PAP is based upon the New York performance assurance plan, and is similar to plans that have been adopted in Massachusetts, Connecticut, Rhode Island, New Hampshire, Vermont, Maine, Delaware and Virginia, where Verizon has been authorized to provide competitive long distance service.¹¹⁷

The PAP is virtually identical to the Virginia plan, with dollars scaled to the West Virginia market, and no party challenged the Virginia plan in the FCC's Virginia 271 proceeding.¹¹⁸ (Tr., Vol. 2 p. 265).

The PAP contains: (1) performance measurements and standards; (2) scoring mechanisms, which include statistical methodologies, to determine whether CLECs are receiving treatment consistent with these measurements and standards; (3) bill credit mechanisms that will be triggered automatically based on the quality of Verizon WV's wholesale performance; and (4) monthly reporting requirements. (Verizon Ex. 3, ¶ 107).

The PAP has two main parts – a Mode of Entry measurement mechanism and a Critical Measures mechanism. “Mode of Entry” (“MOE”) refers to the way in which a competitor may enter the local market (*e.g.*, Resale or UNEs). “Critical Measures” (“CM”) refers to particular measures of wholesale service performance. The PAP establishes an “amount at risk,” which refers to the total dollar amount of bill credits that Verizon WV could be required to pay to CLECs per year. Like plans adopted in other Verizon states, the

¹¹⁶ See Letter to Sandra S. Squire, Executive Secretary, Public Service Commission of West Virginia, dated *August* 23, 2002.

¹¹⁷ *Virginia Order* ¶ 198. See also Verizon Exhibit 9, ¶ 16.

¹¹⁸ *Id.*

amount at risk is based on 39% of net revenue associated with local service per year. The 39% is based on Verizon WV's 2001 ARMIS net return.

The PAP provides that, if Verizon WV's performance scores fall below specified levels, \$14.70 million will be available as bill credits for the MOE measurement mechanism and \$15.88 million will be available for the CM mechanism. The PAP also contains a provision that would double the amount paid in bill credits under the MOE measurement mechanism if Verizon WV provides service failing to meet established standards for three consecutive months, thus putting a total of \$45.28 million per year at risk under these parts of the PAP. (Verizon Ex. 3, ¶ 108).

In addition, the PAP contains a Special Provisions section that makes \$1.96 million available as bill credits for certain measurements related to UNE flow-through, \$4.70 million for UNE ordering measures (paid from MOE dollars at risk), and \$4.70 million for hot cut performance; and makes an additional \$3.53 million available for certain EDI ordering measurements. Of the \$14.89 million, in total, available under the Special Provisions section, funding for the \$4.70 million in bill credits for the UNE ordering measures is derived from any unused funds in the month in question or the prior 6 months. (Verizon Ex. 3, ¶ 109).

All of the foregoing amounts were determined based on the proportional amounts at risk in the New York plan. In addition, \$1.96 million in bill credits would be made available under a Change Control Assurance Plan ("CCAP"). As a result, Verizon WV would have \$57.43 million per year at risk to ensure that it continued to comply with checklist requirements after Verizon receives authority to provide competitive long distance service for West Virginia. (Verizon Ex. 3, ¶ 110).

Although a performance assurance plan is not a requirement for 271 authority, "the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its 271 obligations" after a grant of such authority.¹¹⁹ The WV PAP provides for incentive payments that will prevent Verizon WV from "backsliding" after Verizon receives authority to provide competitive long distance service in West Virginia. The Commission accordingly adopts the proposed PAP.

FiberNet raises two challenges to the proposed PAP. First, FiberNet proposes that the WV PAP become effective immediately. The Commission notes that Verizon WV filed its Section 271 application with the FCC on December 19, 2002. Under the applicable statutory provisions, the FCC will render a decision on or before March 19, 2003. The Commission concludes that it is appropriate for the PAP to be effective prior to the time that the FCC

¹¹⁹ *Virginia Order*, ¶ 198.

concludes its review. Accordingly, the Commission shall adopt the PAP with an effective date of the first day of February, 2003.

Second, FiberNet contends that the dollars at risk in the PAP should be treated as a “penalty floor” and that the dollars at risk should be recalculated annually and adjusted upward based on increases in net return as shown in Verizon WV’s annual ARMIS report. The Commission finds that the level of risk in the proposed WV PAP is sufficiently meaningful and significant to prevent backsliding. Under the proposed PAP, Verizon WV risks a total of \$57 million. Moreover, the level of risk is the same as the level of risk that the FCC found to be a meaningful and significant amount of risk to prevent backsliding in the states of New York, Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, Vermont, Delaware and Virginia, where Verizon has already received authority to provide competitive long distance service.¹²⁰

Finally, while not actually challenging the PAP, AT&T claims that Verizon WV should be required to “affirmatively waive any future legal challenge to the PAP premised on the Commission’s lack of authority to impose the PAP and/or performance penalties.”

Commission Staff also recommends that the Commission clearly state that the approval of the PAP is pursuant to its authority to fix reasonable rates, practices, services, etc. of public utilities in accordance with *W.Va. Code* § 24-2-7(a).

However, it is unnecessary to obtain such a waiver from Verizon WV. The Commission has the authority pursuant to *W. Va. Code* § 24-2-7 to adopt and enforce against Verizon WV a performance assurance plan. Further, the Commission has the authority to enforce a plan that has been agreed to by Verizon WV. *See, e.g., Commission Order*, Case No. 01-0318-T-GI, *et al.* (October 3, 2001) (approving Incentive Regulation Plan with provisions for public interest projects to be undertaken by Verizon WV). And, Verizon WV has agreed to the proposed PAP and to be bound by it until it is terminated in accordance with the terms stated in the PAP.

¹²⁰ *See, e.g., Virginia Order* ¶ 198.

3. Civil Penalties

The Commission has jurisdiction pursuant to *West Virginia Code* § 24-2-7 to issue any necessary orders regarding unreasonable, insufficient or discriminatory practices and to determine, declare and by order fix reasonable practices or services to be furnished, imposed, observed and followed by the utility in the future. *West Virginia Code* § 24-4-3 allows the Commission to impose fines, or civil penalty, up to five thousand dollars for failing to comply with a Commission order under *West Virginia Code* § 24-2-7. *West Virginia Code* § 24-4-8 allows the Commission to impose a separate civil penalty for each day of a violation.

With this order adopting the proposed PAP, C2C guidelines and associated metrics, the Commission is, pursuant to *West Virginia Code* § 24-2-7, establishing what the Commission deems to be reasonable practices and services to be followed and provided by Verizon WV. Paragraph K. of the proposed PAP contains provisions for annual review and updates; changes to the New York Plan; other changes to the West Virginia PAP; and an annual audit. Paragraph A.3. of the proposed PAP states “the Commission retains the discretion to investigate extraordinary wholesale service performance issues and to take appropriate corrective action.”

Notwithstanding Verizon WV’s assertion in its post-hearing filing that “this amount [dollars at risk] dwarfs the Commission’s statutory fine authority – the monetary limit of the Commission’s ability to penalize Verizon WV in the absence of Verizon WV’s agreement to a PAP,” (Verizon, proposed order, p. 83) the Commission believes that it is necessary for the creation of an additional process to ultimately include provisions for Commission imposed fines. The civil penalties will be based upon a Commission established second tier of performance measurements and standards, similar to the PAP, which will trigger self implementing civil penalties to be paid by Verizon. The second tier criteria will be established at levels below the PAP and will be indicative of unacceptable performance below the PAP levels. If Verizon’s performance is below the PAP standards which triggers a payment and if the performance is also below the second tier criteria, Verizon will pay a civil penalty to the Commission which under current law will be paid to the Commission and then transfer to the State’s general revenue fund. The Commission believes these penalties will only apply to truly poor performance, below PAP standards, and is necessary to ensure the greatest opportunity for competition.

Accordingly, the Commission will establish, by this order, a separate proceeding for the purpose of establishing the second tier of measurements and standards which will trigger civil penalties. In addition, this proceeding will also establish the amount of penalty to be paid when the second tier criteria are not met. This proceeding shall be separate from the proceeding established herein regarding the “no facilities” and directory listings issues. The

Commission shall issue a further order in this new proceeding that establishes procedures to be followed in that case.

III. “TRACK A” COMPLIANCE

In addition to finding that Verizon WV is providing CLECs with all 14 items of the Competitive Checklist of the Act, the Commission must consider whether Verizon WV satisfies the requirements of Section 271(c)(1)(A) (“Track A”): that is, whether at least one competitor is providing facilities-based competition to both residential and business customers.¹²¹ In the words of the United States Court of Appeals for the District of Columbia Circuit (the federal circuit court charged with deciding appeals from the Federal Communications Commission’s (“FCC”) section 271 decisions (*see* 47 U.S.C. § 402(b)(9))), “[p]ut simply then, Track A visualizes a demonstration of *a competitor* in the local exchange market.”¹²²

The Commission concludes that Verizon WV satisfies Track A. As of March 2002, competitors are serving a conservatively estimated total of 36,900 lines in West Virginia, including approximately 20,200 lines served over their own facilities, approximately 2,700 lines served using UNE-Platforms, and approximately 14,000 lines served through resale. (Verizon Ex. 1A & 1B, ¶ 8). CLECs are serving at least 7,600 residential lines and approximately 3,200 of these residential lines are being provided on a facilities basis. While some carriers have contended that the amount and scope of competition is inadequate in West Virginia, we note that no carrier has challenged Verizon WV’s satisfaction of the terms of section 271(c)(1)(A). Moreover, the FCC has repeatedly stated that “Track A does not require any particular level of market penetration” and that the Act “imposes no volume requirements for satisfaction of Track A.” *Virginia Order* ¶ 7.

We conclude that Verizon WV’s entry into the long distance market is in the public interest. We find that Verizon WV’s satisfaction of its obligations under the competitive checklist ensures that the local exchange market in West Virginia is open to competition. We agree with the FCC that “BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.” *Virginia Order* ¶ 198.

We reject CLEC arguments that the public interest requires us to consider factors that

¹²¹ *See* 47 U.S.C. § 271(c)(1)(A). There is no dispute that the use of the UNE-Platform constitutes facilities-based service. *See e.g. Kansas/Oklahoma Order* ¶ 41 (stating that carriers providing service “over their own facilities using the UNE platform” satisfy Track A).

¹²² *SBC Communications Inc. v. FCC*, 138 F.3d 410, 413 (D.C. Cir. 1998) (emphasis added).

are outside the scope of the requirements of section 271(c). The Act expressly prohibits use of the public interest inquiry to add local competition requirements beyond those set out by Congress in the competitive checklist.¹²³ As the FCC has repeatedly stated, “[w]e disagree with those commenters that assert that we must, under our public interest standard, consider a variety of other factors such as the economy, levels of competitive LEC market share, or the financing difficulties of competitive LECs.” *Virginia Order* ¶ 197; *see also Pennsylvania Order* ¶ 126; *Rhode Island Order* ¶ 106; *Vermont Order* ¶ 64. As the FCC has stated, “we have consistently declined to use factors beyond the control of the applicant LEC to deny an application.” *Virginia Order* ¶ 197. To do otherwise would be to place Verizon WV’s ability to enter the long distance market in the hands of competitors who have an obvious incentive to keep Verizon WV out of this market.

IV. JOINT STIPULATION

In addition to the finding under Checklist Item 2, above, that the pricing provisions of the Joint Stipulation are reasonable and in the public interest, the Commission finds the remainder of the Joint Stipulation to be reasonable and in the public interest. Under the Commission’s discussion of Checklist Item 5, the Commission has endorsed the Joint Stipulation’s provisions regarding dark fiber. Also, under the Commission’s discussion of Checklist Items 4 and 8 and the OSS, the Commission has approved the provisions for quarterly CLEC/Verizon WV meetings under the supervision of the Staff. Finally, under the Commission’s discussion of Checklist Item 8 and the Carrier-to-Carrier Guidelines, the Commission has approved metric OR 6-04 for directory listings.

CONCLUSION

In its consultative role to the FCC under Section 271 (d)(2)(B), the Commission will recommend to the FCC that Verizon WV has complied with the provisions of Section 271(c) and will provide this Order and Consultative Report to the FCC.

FINDINGS OF FACT

¹²³ *See id.* § 271(d)(4) (“The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist”); *see also* 141 Cong. Rec. S7967 (June 8, 1995) (“The FCC’s public-interest review is constrained by the statute” because “the FCC is specifically prohibited from limiting or extending the terms used in the competitive checklist.”) (statement of then-Senate Commerce Committee Chairman Pressler).

1. Verizon WV has shown that it provides local interconnection for the transmission and routing of telephone exchange traffic, telephone exchange access traffic, or both. Upon request, Verizon WV makes each type of local interconnection specified by the Federal Communications Commission (“FCC”) available at technically feasible points, under interconnection agreements. *See* Verizon Checklist Decl. ¶¶ 30-31.

2. Competitive local exchange carriers (“CLECs”) may interconnect with Verizon WV’s network for the transport and termination of traffic in a variety of ways. Verizon WV provides interconnection to CLECs through collocation arrangements, through the use of dedicated transport facilities from the carrier’s premises, and through other technically feasible forms of interconnection. *See id.* ¶ 32. In compliance with section 251(c)(6) of the Act, Verizon WV supports the provision of both physical and virtual collocation. *See id.*

3. Three CLECs – AT&T, FiberNet and North County – have challenged Verizon WV’s showing on Checklist Item 1.

4. The commercial volume of interconnection trunking that Verizon WV is providing for CLECs shows that Verizon WV is meeting its interconnection obligations. At the end of March 2002, Verizon WV had more than 30,700 local interconnection trunks in place with 10 CLECs — more than half of the total number of interconnection trunks that Verizon WV has in its entire local interoffice network. *See id.* ¶ 39. During 2001, Verizon WV increased the number of interconnection trunks in service between Verizon WV’s network and the networks of CLECs by more than 90 percent, adding approximately 11,600 interconnection trunks. *See id.* ¶ 40. Verizon WV expects to expand further the trunk capacity of its switches by an additional 5,700 tandem trunk terminations and about 26,000 end office trunk terminations by the end of 2002. *See id.*

5. The volume of interconnection traffic exchanged between Verizon WV and CLECs has also increased substantially. *Id.* ¶ 41. Between 2000 and 2001, the average number of minutes exchanged on a monthly basis increased from about 7.8 million to 70.6 million. *Id.* For January through March 2002, there were a total of 119 million minutes per month exchanged on average. *Id.*

6. Both AT&T and FiberNet allege that Verizon WV has failed to demonstrate that it has satisfied its obligations under Checklist Item 1 because of the position Verizon WV has taken on GRIPs (“Geographically Relevant Interconnection Points”).

7. GRIPs provisions are included in some interconnection agreements (“ICAs”) in West Virginia where the provisions were voluntarily negotiated by the CLEC and Verizon. Under the so-called GRIPs provisions, the parties negotiate one point as the place where their networks will physically interconnect, and another point as the place for making

determinations for how the parties will allocate the extra costs of interconnection and transport facilities needed to exchange traffic between the two carriers. Tr., Vol. 3, pp. 236-238. See also Verizon Checklist Rebut. ¶ 19.

8. Many agreements in West Virginia have no GRIPs provisions. Verizon Checklist Rebut. ¶ 16.

9. North County alleged that Verizon WV refuses, as a matter of policy, to interconnect using fiber optic facilities initially designed to provision loops. The Commission has taken administrative notice of the transcript and record in North County's separate formal complaint over the same subject matter. Tr., Vol. 2, p.128; Commission Order, Case No. 02-0809-T-P (November 4, 2002).

10. As of March 2002, CLECs had established 42 collocation arrangements in 26 central offices. (Id., ¶ 73).

11. Collocation is available to CLECs under interconnection agreements and the Verizon WV Collocation Tariff, which is filed with and approved by the Commission. (Verizon Ex. 2, ¶ 63). The types of collocation specifically offered by Verizon WV include physical, virtual and several other collocation alternatives. (Id.).

12. AT&T argues that Verizon WV should advertise returned collocation space at reduced rates. (AT&T Ex. 1, pp. 32-37; Tr., Vol. 2, pp. 81). Staff suggests that Verizon WV should be required to timely provide, on the company's website, information noting the central offices in which collocation arrangements have been returned.

13. The OSS in West Virginia and Virginia were the subject of an extensive third-party test by KPMG, under the direction and supervision of the Virginia State Corporation Commission. In approving Verizon's application in Virginia, the FCC unambiguously found that the OSS in Virginia satisfy the requirements of the Act. (*See Virginia Order* ¶ 22).

14. The independent, third-party examination by PwC confirms that the OSS that Verizon provides to CLECs in West Virginia is the same as the OSS Verizon provides to CLECs in Virginia. (*See* Verizon Ex. 4, ¶¶ 24-25 ¶¶ 22, 25-27, 29-31; Verizon Ex. 6).

15. No party filed any testimony disputing the "sameness" of the OSS.

16. Over 40 CLECs are using the OSS in their commercial operations in West Virginia. There are 10 CLECs using application-to-application interfaces to obtain access to these OSS, while these and others also use the access provided by Verizon's Web-GUI.

In the month of September 2002, alone, these OSS supported more than 20,500 pre-order transactions, and more than 5,000 ordering transactions in West Virginia. Similar volumes have been sustained throughout the past year. These systems have processed over 70,000 local service requests (“LSRs”) or orders in West Virginia from October 2001 to September 2002 and more than 245,000 pre-order transactions in West Virginia during the same period. (Verizon Ex. 10A, ¶ 10).

17. Verizon WV has demonstrated that the pre-ordering interfaces, gateway systems and underlying OSS in West Virginia are identical to those in Virginia. (Verizon Ex. 4, ¶ 36).

18. FiberNet complained that the speed of the Web GUI adversely impacts the pre-ordering process and also contends that some customer service records are missing information. (FiberNet Ex. 1, pp. 52-55).

19. Verizon has consistently met the standards for the metrics that track pre-order activity. (Verizon Ex. 4, ¶ 52).

20. The ordering interfaces, gateway systems and underlying OSS that CLECs use in West Virginia are identical to those used in Virginia. Those systems have recently been reviewed and approved by the FCC.

21. AT&T criticizes the order flow-through rate in West Virginia. (AT&T Exhibit 2, ¶¶ 62-71). The FCC has emphasized that flow-through rates are not a “conclusive measure of nondiscriminatory access to ordering functions,” but rather “one indicium among many of the performance of Verizon’s OSS.” *Pennsylvania Order* ¶ 48.

22. The Verizon WV provisioning systems and processes for CLECs in West Virginia are the same systems and processes used in Virginia. There are no separate provisioning interfaces, since the information required for provisioning is generally obtained from the CLEC at the time the CLEC submits the order. (Verizon Ex. 4, ¶ 98). No party disputes Verizon WV’s compliance with its provisioning obligations.

23. The Verizon WV maintenance and repair systems and processes for CLEC orders in West Virginia are the same systems and procedures used in Virginia. No party disputes Verizon WV’s compliance with this OSS domain.

24. The FCC found, in approving Verizon’s 271 Application in Virginia, that Verizon meets the requirements of the Act with respect to billing. (*Virginia Order*, ¶¶ 38-55.)

25. KPMG testified in the Maryland 271 proceeding that the Virginia billing systems -- which are the same as West Virginia's -- worked "very, very, very well." (Joint Exhibit 3, Maryland Tr. at 1347; *See also* Verizon Exhibit 6).

26. PwC's examination confirmed the comparability of the BOS-BDT bill to the paper bill used by KPMG in its test; the timely transmission of BOS-BDT bills by Verizon WV to CLECs; and that the amount of balancing records inserted into West Virginia BOS-BDT bills is extremely small — significantly less than one percent of the total current charges in the months of January through May 2002. (*See* Verizon Ex. 5; Verizon Ex. 4, ¶¶ 128-144).

27. Verizon WV has consistently exceeded the performance benchmark for the timeliness of DUF (daily usage feed) data, and timeliness in providing wholesale bills. (Verizon Ex. 4, ¶¶ 124-125; Verizon Ex. 10A. ¶ 130).

28. Verizon WV has exceeded the standard of 95% of claims acknowledged within two business days in every month from January through August 2002 (BI-3-04). (Verizon Ex. 10A, ¶ 131).

29. Claims resolved within 28 calendar days of acknowledgment showed steady improvement rising from 12% in January to 87.93% in September (BI-3-05). (*Id.*).

30. Special studies show that for claims submitted after May 1, 2002, Verizon WV has achieved a resolution rate of more than 99.20% of claims resolved within 28 calendar days of acknowledgment for the period of May through September 2002. (*Id.*, ¶ 133). Changes made in the Wholesale Claims organization have resulted in a substantial reduction of the number of outstanding claims and disputed dollars since January 2002, and all of the open claims are less than 30 days old. (*Id.*, ¶ 134).

31. Instances of double billing have been virtually eliminated, dropping to only six in September 2002. (*Id.*, ¶¶ 138-141; Tr. Vol. 2 p. 240).

32. FiberNet asserted that it has 172 billing dispute claims. Differences between FiberNet's records and Verizon WV's records remain, and Verizon WV continues to work with FiberNet to reconcile their records.

33. FiberNet cites no authority to support its claim that properly initiated billing disputes that are not resolved in a timely manner should be resolved presumptively in favor of the CLEC.

34. FiberNet suggests that Verizon WV should be required to update its billing system within 60 days of a product introduction. And, FiberNet believes that it should not be required to pay invoices from Verizon WV until it receives the invoice on a mechanized basis.

35. FiberNet, StratusWave, Staff and the CAD raise concerns about the automated embargo process and Verizon's internal controls around embargoes. Verizon WV points to the following controls to alleviate the concerns raised by the parties: (1) approval of a Director level in the Finance Department; (2) approval of the Verizon Legal Department; and (3) expiration of the prescribed time period for payment in cure of the default, as stated in formal notice of payment default that is sent citing applicable tariff/contract terms. A CLEC would be restored to active status as part of an overnight process on the day it paid the applicable amounts. (Tr. Vol. 1 pp. 223-225; Verizon Ex 10A, ¶¶ 157-161).

36. Billing issues raised by AT&T at the hearing have been addressed and resolved by Verizon WV.

37. In order to demonstrate nondiscriminatory access to its OSS, Verizon WV must also provide evidence that it adequately assists competing carriers in the use of its OSS. Verizon WV offers CLECs extensive support, including a Wholesale Customer Support organization that employs more than 200 employees. (Verizon Ex. 4, ¶ 146).

38. The Change Management process that Verizon has in place for use in West Virginia is the same process that the FCC has repeatedly reviewed and approved. In its most recent section 271 order, the FCC noted that Verizon has a "long track record of compliance" with its change management obligations. *Virginia Order* ¶ 57.

39. Verizon WV agreed to set up quarterly meetings in West Virginia with West Virginia CLECs to discuss issues of common concern, including OSS issues. Verizon WV has placed that agreement in writing in the form of a Joint Stipulation. (Final Report on Workshops, p. 3; Verizon Ex. 12, ¶ 4.c.).

40. No party has challenged Verizon WV's provision of nondiscriminatory access to UNEs, with the exception of Expanded Extended Loops, which are addressed under UNE combinations and under Checklist Item 4.

41. Verizon WV provides CLECs with the combination of an unbundled loop and unbundled local switching elements known as UNE-Platform ("UNE-P") in accordance with the FCC's rules. (Verizon Ex. 4, ¶ 100). Verizon WV also provides combinations of unbundled loop and interoffice facility network elements, also known as Expanded Extended Loops ("EELs"). (Id., ¶ 101).

42. Verizon WV's current EEL policies and practices are the same as Verizon's practices in Virginia and throughout the former Bell Atlantic footprint.

43. During the hearing in this proceeding, CLECs mentioned UNE pricing as their most important issue, or one of their most important issues. (Tr., Vol. 1, pp. 18, 25-26, 28, 30).

44. On October 24, 2002, Verizon, Staff, and the CAD submitted a Joint Stipulation in the Gap/Remand/Merger case which resulted in reduced rates for all recurring and non-recurring charges proposed in that proceeding. (Gap/Remand/Merger Joint Stipulation). On December 18, 2002, the Commission entered an order adopting the October 24, 2002, Gap/Remand/Merger Joint Stipulation.

45. On October 15, 2002, the CAD, Staff and Verizon WV submitted a Joint Stipulation in this proceeding that, among other things, proposed to reduce Verizon's loop and switching UNE rates. (Verizon Ex. 12).

46. The overall impact of the changes in loop rates under the Joint Stipulation is to reduce the average loop price in West Virginia from \$24.58 to \$20.41 – a reduction of approximately 17%. (Id.).

47. Under the Joint Stipulation, rates in specific wire centers are reduced by as much as 34%, and over half of the lines in the State will now be in "urban" Density Cell 1. (Id.).

48. The Joint Stipulation also proposes a 71% reduction in originating switching and a 55% reduction in terminating switching. (Id.).

49. The Staff, the CAD and Verizon WV recommend in their Joint Stipulation that the Commission conduct "no further litigation over Verizon WV's unbundled network element rates until the expiration of Verizon WV's current Incentive Regulation Plan." (Id.)

50. AT&T and FiberNet also offered alternative rate decreases. AT&T would lower loop rates by 17%, but reduce Density Cell 1 rates by more than 30%. FiberNet would lower UNE rates by 40% across-the-board.

51. Staff raised a concern about Verizon's ability to modify the switching rates set forth in the Joint Stipulation should the FCC remove switching rates from state jurisdiction.

52. Verizon WV provided evidence to demonstrate that it complies with Checklist Item 3. (Verizon Ex. 2, ¶¶ 104-120). No carrier challenged Verizon WV's showing with regard to this Checklist Item.

53. No party disputes that Verizon WV provides all of the various types of unbundled loops required by the FCC. (Verizon Ex. 2, ¶ 123). No party disputes, as well, that Verizon WV provides CLECs with the ability to engage in both line sharing and line splitting, in compliance with the FCC's requirements. (Id., ¶¶ 124-125).

54. No party raised any significant issues over Verizon WV's provisioning and maintenance performance for analog, digital (ISDN), xDSL, or shared loops.

55. AT&T, FiberNet and StratusWave challenged Verizon WV's Checklist Item 4 compliance based on the "no facilities" or "no build" policy.

56. Staff and CAD also expressed concern regarding Verizon WV's "no facilities" policy.

57. If Verizon refuses to provide the high capacity line because of the "no facilities" policy, it will nevertheless build the facilities if the CLEC orders the same facilities under Verizon's special access tariff, and pays the higher special access rate for the minimum period required in the tariff.

58. AT&T contends that there is no metric or oversight that effectively verifies Verizon WV's assertions of "no facilities." (Id., p. 6).

59. The determination of whether there are no facilities is a unilateral decision made by Verizon alone. (Tr. Vol. 3, p. 53).

60. The special access tariff rate is charged in every "no facilities" situation, regardless of the actual cost required to provide or complete needed facilities. (Tr. Vol. 3, p. 67).

61. CAD recommended that the Commission should continue to monitor Verizon WV's implementation of the "no facilities" policy by opening its own investigation in West Virginia, or by directing Staff to monitor or participate in the on-going proceeding in Virginia.

62. Staff recommended that the Commission: (1) initiate a general investigation into the "no facilities" policy; (2) adopt special access metrics, on an interim basis, or alternatively, adopt Joint Competitive Industry Group special access metrics proposed by CLECs to the FCC in response to a notice of proposed rulemaking; (3) not defer to the FCC on the special access issue as it will not affect intrastate special access facilities; and (4) if

the Commission adopts special access metrics, it should request authority from the FCC to make special access metrics to in-state special access facilities.

63. AT&T and FiberNet challenged the process for ordering EELs.

64. In paragraph 3.b. of the Gap/Remand/Merger Joint Stipulation, Verizon WV agreed to provide on its website a listing of commonly ordered EELs available in West Virginia. Verizon also agreed to allow reuse of existing resale lines as part of an EEL order. Verizon WV and FiberNet are still working out ordering and provisioning procedures for EELs.

65. Staff recommended that Verizon WV be required to file appropriate tariff sheets implementing the coordinated EEL ordering process, consistent with the Massachusetts and Rhode Island tariffs.

66. FiberNet challenges the availability of loops due to the deployment of integrated digital loop carrier (“IDLC”) technology in Verizon WV’s network.

67. Although Verizon WV confirms that approximately 19% of its local loops are served by IDLC, Verizon WV maintained that only about 1.6% of these local loops are at outside plant terminals where the only type of loop facility is IDLC. (Tr. Vol. 3, pp. 35-36, 86). Verizon WV stated that when it is time to put more facilities into an outside plant terminal, if the terminal previously had only IDLC available loop types, Verizon WV will put in additional copper cable facilities or some additional universal digital loop carrier (DLC) facilities. (Verizon WV Ex. 8A, p. 49).

68. The facts in support of Verizon WV’s compliance with Checklist Item 5 are found in Verizon Ex. 2, ¶¶ 185-201.

69. FiberNet and AT&T challenged Verizon WV’s assertions solely with respect to the company’s “dark fiber” offering. (FiberNet Ex. 1, pp. 31-41; AT&T Ex. 1A, ¶¶ 18-28).

70. Verizon WV disputed FiberNet’s and AT&T’s assertions and argued that its “dark fiber” offering is consistent with prior FCC rulings, and therefore does not constitute Checklist noncompliance. (Verizon Ex. 8A, ¶¶ 113-139).

71. Pursuant to the Joint Stipulation, Verizon WV is obligated to “propose terms and conditions for its dark fiber product that implement those rulings on dark fiber” ultimately made by the FCC in its Virginia arbitration after reconsideration, appeal, modification or final adjudication. (Verizon Ex. 12, ¶ 6 & Fn. 2).

72. Verizon WV provides CLECs with local switching unbundled from transport, local loop transmission, or other network elements. (Verizon Ex. 2, ¶¶ 202-221).

73. No party challenged Verizon WV's compliance with Checklist Item 6.

74. Verizon WV offers CLECs nondiscriminatory access to E911 services and to DA and OCC services pursuant to interconnection agreements, as described in Verizon's Checklist Declaration. (Verizon Ex. 2, ¶¶ 227-258).

75. No party claims that Verizon WV has failed to meet Checklist Item 7.

76. As of March 31, 2002, Verizon WV's White Page database contained over 50,000 CLEC and Reseller listings. (Verizon Ex. 2, p. 98).

77. The terms and conditions of the White Page Directory listings services provided to CLECs are contained in numerous Commission-approved interconnection agreements. (Id., p. 99).

78. Verizon provides CLECs with documentation regarding the procedures for listing their customers in directories on the Verizon Wholesale web site. (Id., p. 101).

79. White Page Directories are published by Verizon Directory Services West Virginia Inc., an indirect wholly-owned subsidiary of Verizon Communications Inc., and one of a number of Verizon Information Services ("VIS") companies. (Id.). VIS distributes directories to Verizon WV and CLEC customers at exactly the same time and in exactly the same manner. (Id.).

80. There is a multi-step process through which a CLEC obtains a white page directory listing for one of its customers that includes the involvement of three separate entities, i.e. the CLEC, Verizon WV and VIS. (Verizon Ex. 2, pp. 99-100).

81. A CLEC orders the directory listing through a Local Service Request ("LSR") submitted to Verizon WV through use of the Web GUI or the EDI ("Electronic Data Interexchange") interface. (Tr., Vol. 1, pp. 215-218).

82. After the LSR is completed, Verizon sends the CLEC a provisioning completion notice, and then after Verizon's internal systems are updated, Verizon sends the CLEC a billing completion notice. (Tr. Vol. 1, p. 216).

83. Verizon WV suggests that CLECs use a “directory listing inquiry transaction” to query the directory listings database to find out exactly how the listing appears. (Verizon WV Ex. 2, pp. 122-123).

84. Verizon WV’s model interconnection agreement includes authority for a charge per directory listing inquiry transaction. (Tr., Vol. 1, p. 124, Vol. 2, p. 22).

85. Verizon WV considers the query a preorder transaction and does not charge for it, although it is permitted to charge. (Tr., Vol. 1, pp. 126-132).

86. AT&T recommends that the Commission adopt the “no charge” policy as one of the conditions of Section 271 approval. (Tr., Vol. 2, pp. 28, 71-72).

87. Thirty days prior to the “service order close” date for a particular White Page Directory, VIS provides to each CLEC a Listings Verification Report (“LVR”) that contains all listings for the particular CLEC that are in the VIS database for publication in the upcoming directory. (Verizon Ex. 2, p. 100; Tr., Vol. 1, p. 219).

88. The CLEC has the responsibility to check, or verify, each of its listings in the LVR, and report mistakes back to Verizon. (Tr., Vol. 1, pp. 163-164).

89. The LVR does not reflect the listing in exactly the same format in which the information will appear in the directory. (Tr., Vol. 1, pp. 222-223).

90. As part of the Joint Stipulation, Verizon WV has agreed to include Directory Listing metric OR-6-04 in the Carrier to Carrier Guidelines. OR-6-04 compares the LSR submitted by the CLEC to Verizon’s internal transactions created for Verizon’s service order processing systems. (Tr., Vol. 1, pp. 106-107; Verizon Ex. 12, ¶ 12.b).

91. There are no metrics that make a comparison to the VIS database. (Tr., Vol. 1, p. 108).

92. Directory listing issues were discussed at several of the workshops, including the 4th, 6th and 7th workshops. Both FiberNet and StratusWave provided examples of specific errors and problems related to directory listing for Verizon WV to investigate. (Joint Ex. 1).

93. At the 7th Workshop Verizon WV provided a report on the directory listing issues set forth by the CLECs. (Verizon Ex. 10A, ¶¶ 103-108; Tr. Vol. 1, pp. 110 – 116, 157 – 161; Joint Exhibit 1).

94. The Workshop Reports reflect that CLECs have been experiencing numerous problems with the directory listing process, the most significant being that CLECs' customers' directory listings are often incorrectly published or left out of the white pages directory entirely (Joint Exhibit 1).

95. As a result of concerns expressed at the workshops, Verizon WV contacted VIS and held publication of four upcoming books, which were Montgomery, Pt. Pleasant, Beckley and Morgantown. (Verizon Ex. 10A, p. 51).

96. Verizon WV identified 114 listings from lists provided by FiberNet and from an additional sample of listings grabbed by Verizon that would have been made in error if not corrected before publication. Verizon represented that of the 114 errors corrected, 66 would have been "severe" errors. (Verizon Ex. 10A, pp. 52-53).

97. Verizon WV investigated the root cause of the errors and found that the top reasons in descending order for errors were NMC (National Market Center) Representative error, followed by ILEC system error, then VIS system/process error and CLEC error. (Verizon Ex. 10A, p. 53).

98. Verizon WV has taken several corrective actions to address these problems, including re-enforcement of NMC representative training, a change in the NMC work routing, completion of software corrections, and implementation of a VIS system fix. (Verizon-WV Ex. 10A, p. 53).

99. When FiberNet reviews the LVRs it identifies numerous errors in the listing information. In 2002, of 4589 listings submitted, FiberNet identified 1229 listing errors in the LVRs, for an error rate of 27%. (FiberNet Ex. 1, p. 68).

100. Verizon WV has started holding FiberNet orders to ensure that the directory listing portion of the order is correct, which does not allow FiberNet's orders to be processed in a timely manner. (FiberNet Ex. 1, pp. 69-70).

101. AT&T believes that the significant directory listings errors described by the CLECs in West Virginia means that CLECs are receiving "discriminatory treatment because, in sharp contrast to Verizon's wholesale performance, Verizon's directory listing accuracy for its own retail operation is an outstanding model of nearly perfect performance." (AT&T Ex. 1, pp. 13-14).

102. FiberNet and AT&T assert that the KPMG test of Verizon's systems in Virginia did not examine directory listings, and thus did not examine the accuracy of CLEC

customer directory listings or whether or not the directory listings were actually inserted in the directory. (FiberNet Ex.1., p. 70; AT&T Ex. 1, p. 16; Tr., Vol. 1, p. 300).

103. AT&T argues that Verizon WV should have the responsibility to detect and correct the errors it makes in converting a CLEC LSR to a service order, or when sending the service order to VIS. (Tr., Vol. 2, pp. 34-35).

104. StratusWave stated that Verizon WV failed to list four of 13 of StratusWave's "new" customers in the "214" exchange, and failed to list the number of 35 out of approximately 100 StratusWave customers that have changed their service from Verizon to StratusWave. (StratusWave Ex. 1, p. 9).

105. StratusWave complains that Verizon WV's directory contains errors in the directory listings of 29 out of approximately 100 of StratusWave's customers, and over 50% of StratusWave's directory listings were incorrect. (StratusWave Ex.1, p. 9).

106. Staff stated that the difficulties the CLECs have in assuring directory accuracy is "especially troublesome because of the importance of complete and accurate directory listings, especially to businesses, and because of the fact that phone books are only published once per year." (Staff Ex. 1, p. 7).

107. Staff recommended several corrective measures that Verizon WV should be ordered to undertake before the Commission certifies its compliance on this issue: (1) the Commission should initiate a general investigation and establish a work group to derive a metric measuring the accuracy of the information contained in the LVR to the information contained in the LSR/LSRC; (2) the work group should develop, within 3 months, appropriate metrics for inclusion in the C2C Guidelines being proposed by Verizon WV; (3) any metric with a performance standard associated with it, benchmark or parity, established by the work group should be incorporated in the Critical Measures portion of the proposed PAP; and (4) as an alternative to establishing a metric, the work group may propose processes whereby CLECs can interface with VIS in order to submit their LSRs to VIS directly.

108. The CAD recommended that the Commission condition approval of Verizon WV's application on inclusion of Metric OR 6-04 in the Carrier-to-Carrier Guidelines with an initial 95% flow-through benchmark which rises to 98% over a three-year period. (Tr. Vol. 2, p. 232).

109. The CAD also recommended that the Commission direct Staff to monitor or join the directory metrics proceedings in Pennsylvania. Following a report on the Pennsylvania actions, the Commission should consider requiring Verizon WV to meet with

the West Virginia working group to develop metrics relating to the ultimate accuracy of white page directory listings. Following adoption of any directory accuracy metric or metrics, the Commission should then consider whether to add those metrics to the PAP under the normal PAP change process.

110. Verizon WV asserts that it meets the requirements of Checklist Item 9 by complying with industry numbering administration guidelines and FCC rules regarding access to telephone numbers. (Verizon Ex. 2, ¶¶ 273-278).

111. North County is the only party to contend that Verizon WV has failed to meet Checklist Item 9. (North County Ex. 2, pp. 25-34).

112. North County's claim is the subject of a pending complaint proceeding and will be resolved there.

113. Verizon WV provides nondiscriminatory access to database and associated signaling necessary for call routing and completion, as it has explained in detail in its filings with the Commission. (Verizon Ex. 2, ¶¶ 279-317).

114. No party challenges Verizon WV's demonstration that it complies with Checklist Item 10.

115. Verizon WV provides LNP pursuant to interconnection agreements, as described in its Checklist Declaration. (Verizon Ex. 2, ¶¶ 318-322).

116. No party contends that Verizon WV fails to comply with Checklist Item 11.

117. FiberNet and StratusWave maintain that Verizon WV is not in compliance with Checklist Item 12 because they have had to purchase cross-LATA interstate facilities or use the services of another carrier to provide local calling to certain of their West Virginia customers to ILEC customers in Ohio, Pennsylvania, or Virginia, to which Verizon WV offers local calling to its own customers. (FiberNet Ex. 1, p. 79; StratusWave Ex. 1, ¶ 23).

118. It is undisputed that this issue "does not come into play in situations in which the CLEC customers are being served as a resale or UNE-Platform basis." In those situations, the interLATA local calls are routed over the trunks that Verizon WV has established between its switch and the switch of another ILEC in the other LATA. (FiberNet Ex. 1 at 80, n. 25; Tr., Vol. 3, pp. 278-279).

119. Verizon WV maintains that, when a CLEC uses its own switch, the CLEC is responsible for establishing its own trunks to the ILEC switch in the other LATA, in accordance with the Local Exchange Routing Guide ("LERG"), and for making

arrangements to interconnect with the other ILEC, such as Ameritech in Ohio, including entering into an interconnection agreement with that ILEC. (Verizon Ex. 8A, ¶¶ 140-147).

120. Verizon WV argues that this was the technical solution to which Verizon WV, the CLECs, and the Commission Staff agreed over twenty months ago. (Id., ¶¶ 143-145).

121. In contrast FiberNet argues that, in this situation, the CLEC should not have to do the “heavy lifting” with Ameritech or the other ILEC in the other LATA, and implies that Verizon WV should devise another way to route the CLEC interLATA traffic. (FiberNet Ex. 1, p. 82).

122. FiberNet acknowledges that it agreed to the solution in question, but argues that, at the time, it had no other viable alternative. (Id., p. 83). StratusWave also identifies the interLATA calling issue to be a problem, but offers no specific alternative solution. (StratusWave Ex. 1, pp. 9-10).

123. Verizon WV provides reciprocal compensation arrangements as described in its Checklist Declaration. (Verizon Checklist Declaration, ¶¶ 330-333).

124. FiberNet and AT&T contend that Verizon WV does not meet this checklist item because Verizon WV allegedly does not pay reciprocal compensation on Internet-bound traffic as required by the FCC. (FiberNet Ex. 1, pp. 83-86; AT&T Ex. 1, ¶¶ 76-80).

125. Staff stated that payment for Internet-bound traffic is not a basis for a finding of checklist noncompliance.

126. CAD is of the opinion that the reciprocal compensation issues raised by the CLEC’s should be resolved by the Commission on a case by case basis.

127. It is undisputed that, as of March 2002, the Commission has approved and is reviewing for approval approximately 30 resale-only interconnection agreements and approximately 30 facilities-based interconnection agreements, many of which include resale provisions, between Verizon WV and CLECs. (Verizon Ex. 2, ¶ 337).

128. It likewise is undisputed that Verizon WV is providing resale services in commercial volumes. As of the end of March 2002, there were approximately 14,000 resold lines in service in West Virginia, of which approximately 9,600 were business lines and approximately 4,400 were residence lines. (Id., ¶ 338).

129. No party challenges Verizon WV’s compliance with Checklist Item 14.

130. Updated data through August 2002 shows that over two-thirds of the 44,100 lines held by competitors were served by facilities provided at least in part by CLECs. Resale and UNE-P service, which rely entirely on the existing facilities of Verizon, account for the remaining one-third of lines held by competitors.

131. Total lines served by CLECs amounted to 5.1% of the local exchange market in Verizon WV's service territory at the end of August, up from 4.2% at the end of March. Business lines accounted for 82% of the CLEC market share.

132. The C2C Guidelines proposed by Verizon WV include performance measurements, standards and reports that will allow the Commission, the CLECs and Verizon WV to monitor the timeliness, reliability and quality of Verizon WV's wholesale service performance. (Verizon Ex. 3, ¶¶ 6, 9-104). The C2C Guidelines include more than 500 disaggregated submetrics, measuring performance in seven key categories: Pre-Ordering, Ordering, Provisioning, Maintenance and Repair, Network Performance, Billing, and Operator Services and Directory Assistance. (Id., ¶¶ 17-18).

133. The proposed C2C Guidelines are the same as the New York Guidelines in effect as of May 2002, with only those modifications that are necessary to address differences in West Virginia systems and processes, and the addition of metric OR-6-04, % Accuracy – Directory Listing. (Id., ¶ 6; Verizon Ex. 9, ¶¶ 22-23). Guidelines based on the New York Guidelines have already been adopted in Virginia, the District of Columbia, Maryland, Delaware, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire and Maine. (Verizon Ex. 3, ¶ 6).

134. Verizon WV has proposed that the Commission adopt the following process for updates to the Guidelines after the Guidelines have been adopted by the Commission:

- Verizon WV shall file with the Commission the New York consensus and/or non-consensus metric change(s) and proposed implementation interval(s), including an explanation of time required to implement, and description of the changes made to adapt to West Virginia systems. Such filings shall be within 30 calendar days of the submission date of the compliance filing in New York.
- With each such filing, Verizon WV may submit to the Commission any opposition to adoption of any metric change(s). Verizon WV shall set forth its reasons for opposition in any such filing.
- Verizon WV shall make an electronic copy of its filing on the proposed consensus and/or non-consensus change(s) available to the Commission Staff,

the Consumer Advocate Division and any CLEC that notifies Verizon WV in writing that it would like to receive such filings.

- The Commission Staff, Consumer Advocate Division and interested parties shall have an opportunity to comment and/or request a hearing on the proposed metric change(s) submitted by Verizon WV. Such comments are not limited to, but should address whether the metric change(s) appropriately adapts the New York metric to West Virginia and on the proposed implementation interval(s). Verizon WV and others that did not object to a metric change(s) or proposed implementation interval(s) shall be provided an opportunity to respond if anyone objects to the adoption of the change(s) or implementation interval(s).
- If neither the Commission Staff, Consumer Advocate Division, nor any interested party, including Verizon WV, has objected to the adoption of a proposed consensus or non-consensus metric change(s) after the Commission has provided an opportunity for comment, the change should be considered approved forty-five days after submission of the filing, unless otherwise ordered by the Commission. (Verizon Ex. 3, ¶ 7).

135. The update provisions do not preclude the Commission or any other party from proposing modifications to the Guidelines in accordance with the Commission's rules of practice. (Verizon Ex. 3, ¶ 7).

136. FiberNet has asked that any changes to the C2C Guidelines not take place without affirmative Commission action.

137. OR-6-04 is the same metric that has been adopted in Virginia, Maryland, the District of Columbia and New Hampshire. The metric will be implemented in West Virginia on the same schedule as Virginia, and Verizon WV intends to report results beginning with the December data month.

138. Verizon's proposed billing metrics are based on industry consensus reached in the New York Carrier Working Group, and measure the same aspects of billing performance that are now measured in ten Verizon jurisdictions. The proposed billing metrics include measures of Verizon WV's timeliness in acknowledging and resolving billing claims (BI-3-04 and BI-3-05, respectively). BI-3-04 and BI-3-05 are currently in effect in New York on a trial basis, and have been included in the West Virginia Guidelines on an interim basis pending the outcome of the New York trial.

139. The New York Commission has proposed to include placeholders for these billing metrics in the New York performance assurance plan, with metrics to be included in the PAP once the metrics are finalized. As provided by the proposed PAP that is discussed below, if changes are made to the New York performance assurance plan, Verizon WV will submit the changes to this Commission for consideration. (Verizon Ex. 9, ¶ 24; Tr. Vol. 2 pp. 269-270).

140. AT&T and FiberNet request that the Commission direct full replication of Verizon WV's metrics reports.

141. As KPMG explained, full metrics replication is not necessary to ensure accuracy, and "a sampling technique would provide the same level of assurance." (Joint Exhibit 3, pp. 1378-1383). A full replication was performed by KPMG in Virginia, and Verizon uses the same procedures and underlying systems to prepare performance reports for West Virginia. The Virginia Commission has continued to replicate reported results on a monthly basis since the data month of January 2002. (Tr., Vol. 2 pp. 305, 307-308).

142. FiberNet and Staff have asked the Commission to impose a requirement upon Verizon WV for the refiling of corrected performance reports. Verizon typically does not refile corrected reports. (Tr., Vol. 3, p. 16).

143. Verizon WV's current policy is to retain C2C reports for five years. (Tr. Vol. 3, p. 18). If Verizon WV reduces this document retention period in the future, Staff requests that Verizon WV be required to seek Commission approval.

144. With the exception of the effective date, the proposed West Virginia PAP has been agreed to by Verizon WV and AT&T. (*See* Letter to Sandra S. Squire, Executive Secretary, Public Service Commission of West Virginia, dated August 23, 2002).

145. The West Virginia PAP is based upon the New York performance assurance plan and is virtually identical to the Virginia plan.

146. The PAP has two main parts – a Mode of Entry measurement mechanism and a Critical Measures mechanism, establishing an "amount at risk," which refers to the total dollar amount of bill credits that Verizon WV could be required to pay to CLECs per year.

147. The West Virginia PAP amounts were determined based on the proportional amounts at risk in the New York plan.

148. Verizon WV will have \$57.43 million per year at risk to ensure that it continued to comply with checklist requirements after Verizon receives authority to provide competitive long distance service for West Virginia. (Verizon Ex. 3, ¶ 110).

149. The level of risk is the same as the level of risk that the FCC found to be a meaningful and significant amount of risk to prevent backsliding in the states of New York, Connecticut, Massachusetts, Rhode Island, Maine, New Hampshire, Vermont, Delaware and Virginia, where Verizon has already received authority to provide competitive long distance service. *See, e.g., Virginia Order* ¶ 198.

150. While not actually challenging the PAP, AT&T claims that Verizon WV should be required to “affirmatively waive any future legal challenge to the PAP premised on the Commission’s lack of authority to impose the PAP and/or performance penalties.” Commission Staff also recommends that the Commission clearly state that the approval of the PAP is pursuant to its authority to fix reasonable rates, practices, services, etc. of public utilities in accordance with *W.Va. Code* § 24-2-7(a).

151. As of March 2002, competitors are serving a conservatively estimated total of 36,900 lines in West Virginia, including approximately 20,200 lines served over their own facilities, approximately 2,700 lines served using UNE Platforms, and approximately 14,000 lines served through resale. (Verizon Ex. 1A & 1B, ¶ 8). CLECs are serving at least 7,600 residential lines and approximately 3,200 of these residential lines are being provided on a facilities basis.

CONCLUSIONS OF LAW

1. The Act expressly sets forth the role of the respective state commissions in the Section 271 process: “to verify the compliance of the Bell operating company with the requirements of subsection (c) [of Section 271].” Under the Act, the FCC must “consult” with the state commission of any state that is the subject of a section 271 application.

2. The Commission is not precluded from considering testimony and evidence proffered in connection with the Section 271 process under its own, independent authority under Chapter 24 of the *W.Va. Code*.

Checklist Item 1: Interconnection

3. Section 271(c)(2)(B)(i) of the Act requires Verizon WV to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).” Verizon WV meets its general interconnection obligations in West Virginia in substantially the same manner endorsed by the FCC in approving the Virginia and Pennsylvania Section 271 applications.

4. In the *Virginia Order*, as in other orders, the FCC found it sufficient to show compliance with this Checklist Item that Verizon “has entered into at least one interconnection agreement in Virginia that does not follow the GRIPs policy.” *Virginia*

Order ¶ 173. See also *New Jersey Order* ¶ 155; *New York Order* ¶ 76; *Kansas/Oklahoma Order* ¶ 234.

5. The Commission will not refuse to endorse Verizon WV's section 271 application on the grounds of North County's allegation that Verizon WV refuses, as a matter of policy, to interconnect using fiber optic facilities initially designed to provision loops. (North County Ex. 1). The Commission finds North County's allegations to be a snapshot in time that are not necessarily reflective of Verizon WV's current business practices. The issues raised by North County will be fully addressed in a forthcoming order in Case No. 02-0254-T-C.

6. Verizon WV has demonstrated that it is in compliance with the requirements of Section 271(c)(2)(B)(i) of the Act through the multiple collocation offerings and alternatives that it makes available to CLECs in West Virginia.

7. The Commission concludes that it is reasonable and not unduly burdensome to require Verizon WV to timely provide, on the company's website, information noting the central offices in which collocation arrangements have been returned, and to timely update that information. With regard to "timely," the Commission shall require the posting and updating of such information within 10 business days of the return, or reassignment, of collocation arrangements.

8. Under the circumstances presented, the Commission concludes that Verizon WV satisfies Checklist Item 1.

Checklist Item 2: Nondiscriminatory Access to Network Elements

9. Verizon Virginia's OSS has already been found to satisfy the requirements of the Act by the FCC (*Virginia Order*, ¶ 22). The Commission concludes that the OSS systems in Virginia and West Virginia are the same.

10. The instances that FiberNet has raised regarding Verizon WV's pre-ordering systems appear to be isolated incidents that do not warrant a finding of non-compliance. The Commission concludes that Verizon WV has demonstrated that it provides nondiscriminatory access to its pre-ordering functions.

11. No party has come forward with meaningful evidence that refutes Verizon WV's showing regarding its ordering OSS. The Commission concludes that Verizon WV has demonstrated that it provides nondiscriminatory access to its ordering functions.

12. The Commission concludes that Verizon WV has demonstrated that it provides nondiscriminatory access to its provisioning functions.

13. The Commission concludes that Verizon WV has demonstrated that it provides nondiscriminatory access to its maintenance and repair functions.

14. To meet the requirement of non-discriminatory access to its billing OSS functions, the FCC has stated that “a BOC must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers’ customers in substantially the same time and manner that a BOC provides such information to itself, and with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.” *Virginia Order*, Appendix C, ¶ 39. The evidence shows that Verizon WV meets these requirements by providing service usage data and wholesale bills that are complete, accurate and timely. (Verizon Ex. 4, ¶¶ 114-144; Verizon Ex. 10A, ¶¶ 128-166; *Virginia Order* ¶¶ 38-55).

15. Verizon WV is entitled to bill and collect for services rendered, regardless of the means by which the bill is developed.

16. The Commission will not tolerate any unwarranted imposition of the Automated Embargo System as a means of bringing pressure on CLECs involved in legitimate billing disputes with Verizon WV. CLECs may file formal complaints including requests for immediate, interim relief in those situations in which they are threatened with an improper embargo for failure to pay disputed charges.

17. None of the CLEC billing claims are indicative of a systemic problem, or evidence that Verizon WV is not meeting its obligations under the Act.

18. KPMG’s testing of the OSS, the extensive commercial use of these OSS, the performance of these OSS as measured by the relevant measurements that Verizon WV has offered, as well as the lack of any evidence of systemic problems with these systems allow the Commission to conclude that Verizon WV has satisfied its OSS obligations under the Act.

19. Section 271(c)(2)(B)(ii) of the Act requires Verizon WV to offer “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).” Section 251(c)(3) in turn requires the incumbent LEC to “provide, to any requesting telecommunications carrier . . . , nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory” and “in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service.”

20. The Commission concludes that Verizon WV provides nondiscriminatory access to UNEs.

21. In accordance with the United States Supreme Court decision in *Verizon Communications Inc. v. FCC*, 122 S. Ct. 1646 (2002), Verizon WV must accept new orders for EELs that are not already combined, subject to facility availability and in accordance with the FCC's limitations on the conversion of special access facilities to EELs.

22. The FCC has found Verizon's EEL practices are in compliance with the FCC's existing rules and regulations. (*Virginia Order* ¶ 61).

23. The Commission concludes that Verizon WV provides nondiscriminatory access to UNE combinations pursuant to Section 271 (c)(2)(B)(ii).

24. The Commission concludes that Verizon WV provides competing carriers in West Virginia with commercial volumes of unbundled network elements, including unbundled local loops, local switching, and local transport, at TELRIC compliant prices.

25. Under Section 252(d)(1) of the Act, however, the Commission must price UNE rates "based on cost," which under applicable FCC regulations means TELRIC pricing. No party disputes that the recommended rates under the Joint Stipulation are lower than those rates already found by the Commission to be TELRIC compliant. Likewise, no party disputes that the UNE-P and loop rates are substantially below the FCC's TELRIC benchmark, and that the switching rates also are well below that benchmark.

26. The Commission concludes that the UNE price reductions under the Joint Stipulation are reasonable and in the public interest.

27. The Commission concludes that the pricing proposals submitted by AT&T and FiberNet are not appropriate.

28. To clarify the Commission's interpretation of the limitations upon Staff and CAD with regard to rate proceedings initiated prior to January 1, 2006, the Commission concludes that the Joint Stipulation does not preclude Staff's or CAD's participation in any UNE pricing cases instituted before January 1, 2006. Rather, the Commission concludes that the Joint Stipulation precludes Staff or CAD from initiating a case, by the filing of a motion or petition with the Commission, the purpose of which would be to lower UNE rates. The Commission does not interpret the Joint Stipulation to preclude Staff or CAD from participating in such a case that is initiated on the Commission's own motion, or on the motion or petition of a party who was not a signatory to the Joint Stipulation. Nor, once

such a case is open, would Staff or CAD be precluded from recommending in that case that UNE rates be lowered.

29. The Commission concludes that no provision of the Joint Stipulation releases Verizon WV from its obligation to maintain the switching rates proposed therein, prior to January 1, 2006, other than by order of this Commission. Verizon WV shall adhere to the reduced switching rates set forth in the Joint Stipulation, until January 1, 2006, unless the Commission reopens or reconsiders any UNE pricing issue prior to that date. Verizon shall not modify the switching rate set forth in the Joint Stipulation without Commission approval, even if the status of UNE switching rates is modified by the FCC.

30. The Commission concludes that Verizon WV satisfies the requirements of Checklist Item 2.

Checklist Item 3: Poles, Ducts, Conduits And Rights-of-Way

31. Section 271(c)(2)(B)(iii) of the Act requires Verizon WV to offer “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by [Verizon WV] at just and reasonable rates in accordance with the requirements of section 224.” 47 U.S.C. § 271(c)(2)(B)(iii).

32. The Commission concludes that Verizon WV provides nondiscriminatory access to its poles, ducts, conduits and rights of way pursuant to Section 271(c)(2)(B)(iii), and therefore satisfies Checklist Item 3.

Checklist Item 4: Unbundled Local Loops

33. Section 271(c)(2)(B)(iv) of the Act requires a Section 271 applicant to provide or offer to provide local loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.

34. Based on Verizon WV’s continuing efforts to increase the level of spare copper and universal DLC within its network in West Virginia, and based on the FCC’s approval of the same unbundling processes and procedures used in other jurisdictions, the Commission believes that Verizon WV satisfies its obligation to provide CLECs with unbundled loops when a customer is served by IDLC.

35. Under the FCC’s rules, an ILEC is not required to build new facilities or install additional equipment. (*Pennsylvania Order* ¶¶ 91-92; *New Jersey Order* ¶ 151). The FCC has addressed this issue in previous 271 cases, and has repeatedly held that Verizon’s DS-1

UNE provisioning policy, which AT&T and FiberNet challenge here, is consistent with current FCC rules and the Act. (*Pennsylvania Order* ¶¶ 91-92; *New Jersey Order* ¶ 151). In its recent Section 271 order approving the Verizon Delaware and New Hampshire companies, the FCC again found this process, based upon the evidence presented, to be checklist compliant and stated that this specific issue will be addressed in its *Triennial Review Proceeding* or an appropriate enforcement proceeding. (*Delaware/New Hampshire Order* ¶ 112 and fn. 392). This same issue was raised, yet again, in the Virginia 271 proceeding and the FCC again reached the same conclusion in its October 30, 2002, order approving Verizon for long distance authority in Virginia. (*Virginia Order* ¶ 141 and fn. 492). For these reasons, the Commission concludes that the evidence presented is not sufficient to find noncompliance with Checklist Item 4.

36. Though it is not sufficient to warrant a finding of noncompliance based upon the FCC's rulings, the Commission is concerned by the issues presented by the CLECs, Staff and CAD regarding the "no facilities" policy.

37. The Commission agrees with the CAD that it is appropriate to initiate a proceeding for continued Commission review of the "no facilities/special access" issues raised in this proceeding. Specifically, this proceeding shall address: (1) the activities Verizon WV defines as "construction"; (2) how the special access rates charged by Verizon WV compare to its costs of such "construction," and whether specific non-recurring charges can be established for the principal types of construction identified by Verizon WV; (3) whether permanent special access metrics should be adopted, and if so, what those metrics should be; and (4) whether any monetary consequences should flow from Verizon WV's failure to meet any special access metrics that may be established.

38. Verizon's commitment to honor its obligations set forth in the Gap/Remand/Merger Joint Stipulation reasonably resolves this issue.

39. Verizon WV is using the same EEL ordering processes that are used by Verizon in New Jersey, Delaware, and Virginia where Verizon has received FCC approval to provide interLATA service. (Verizon Ex. 8A, ¶ 84). In its consultative role to the FCC in the present proceeding, the Commission sees no reason to advise that Verizon WV be denied Section 271 relief on these grounds.

40. Under the Commission's authority pursuant to Chapter 24 of the *West Virginia Code*, the Commission agrees with the positions of AT&T, Staff and FiberNet that Verizon WV should be required to use a "coordinated" ordering process for these facilities and to file tariff sheets setting forth the coordinated EEL ordering process.

41. The Commission concludes that Verizon WV satisfies the requirements of Checklist Item 4.

Checklist Item 5: Unbundled Local Transport

42. Section 271(c)(2)(B)(v) requires Verizon WV to provide or offer to provide local transport from the trunk side of a switch unbundled from switching or other services.

43. Verizon WV's procedures with respect to dark fiber are substantially the same as the procedures that have been approved in Verizon's Virginia and Pennsylvania applications. (*Virginia Order* ¶¶ 145-147, 182; *Pennsylvania Order* ¶¶ 109-113).

44. The Commission concludes that the provisions in the Joint Stipulation constitute a reasonable and appropriate manner to resolve the parties' concerns regarding Verizon WV's dark fiber products.

45. The Commission concludes that Verizon satisfies the requirements of Checklist Item 5.

Checklist Item 6: Local Switching

46. Section 271(c)(2)(B)(vi) of the Act requires that a BOC provide "[l]ocal switching unbundled from transport, local loop transmission, or other services.

47. Verizon WV provision of local switching is in accordance with its obligations under the Act.

48. The Commission concludes that Verizon WV satisfies Checklist Item 6.

Checklist Item 7: 911/E911, Directory Assistance and Operator Services

49. Section 271(c)(2)(B)(vii) of the Act requires Verizon WV to offer nondiscriminatory access to (1) E911 services; (2) directory assistance ("DA") services to allow other carriers' customers to obtain telephone number information; and (3) operator call completion ("OCC") services.

50. The Commission concludes that Verizon WV satisfies Checklist Item 7.

Checklist Item 8: White Page Directory Listings

51. Section 271(c)(2)(B)(viii) of the Act requires Verizon WV to offer nondiscriminatory access to white pages directory listings. The FCC has explained that a “BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provide[s] nondiscriminatory appearance and integration of white page directory listings to competitive LECs’ customers; and (2) provide[s] white page listings for competitors’ customers with the same accuracy and reliability that it provides its own customers.” *New Jersey Order*, App. C, ¶ 60.

52. The Commission concludes, as Verizon WV itself admits, that the directory listing process is not perfect. However, the Commission also finds that Verizon WV uses the same directory listing procedures in West Virginia as it does in Virginia, which the FCC has reviewed and found to satisfy the requirements of the Act. *See Virginia Order* ¶¶ 152-171.

53. As did the FCC, the Commission concludes that Verizon WV has “implemented numerous system improvements that demonstrate Verizon WV’s ability to provide nondiscriminatory access to directory listings,” that Verizon “has taken the necessary steps to mitigate” past problems, “and has demonstrated a commitment to fix any unanticipated future problems that may arise.” *Virginia Order* ¶ 153.

54. Based on the concerns raised over directory listings in this proceeding, the Commission will order Verizon WV to adopt OR 6-04 in its Carrier-to-Carrier guidelines, effective with the data month of December 2002 or as soon thereafter as possible.

55. The record in this proceeding reveals that Verizon WV has complex procedures for modifying directory listings that has led to numerous complaints from competitors. While the process itself appears to be non-discriminatory, and Verizon WV has taken actions to remedy problems, the complexity of the process is inherently confusing and lends itself to errors. While errors in any process are inevitable, the impact of a directory listing error can be devastating to a competitor or the competitor’s customer.

56. The Commission concludes that Verizon WV satisfies the requirements of Checklist Item 8. However, the Commission concludes that additional Commission action on the directory listing process is warranted.

57. The Commission concludes the previously established work group shall also review Verizon WV’s directory listings process. The work group shall: (1) develop a metric measuring the accuracy of the information contained in the LVR to the information contained in the LSR/LSRC; (2) develop appropriate metrics for inclusion in the C2C guidelines; (3)

address whether any metric ultimately developed should be included in the Critical Measures portion of the PAP; and (4) determine whether, as an alternative to adoption of metrics, that a process for CLECs direct interface with VIS should be established.

58. The structure for reporting back to the Commission shall be the same as that outlined in the “no facilities” issues outlined in Checklist Item 4. In order to avoid unnecessary duplication of effort, the Commission recommends that Staff and the working group monitor the ongoing proceedings on this topic that are being conducted by the Pennsylvania Commission.

59. With regard to AT&T’s concern that Verizon WV may begin implementing a “per dip” (per inquiry) directory systems inquiry charge, where permitted to do so under applicable interconnection agreements, the Commission understood Verizon WV’s position to be that it was not charging for the inquiry and had no current plans to assess the charge. If and when Verizon WV ever intends to assess the charge, Verizon WV shall make an appropriate filing with the Commission for approval prior to instituting the charge.

Checklist Item 9: Access to Telephone Numbers

60. Section 271(c)(2)(B)(ix) of the Act requires Verizon WV to comply with telecommunications numbering administration guidelines, plans and rules concerning access to telephone numbers. This section requires Verizon WV to provide nondiscriminatory access to telephone *numbers* for assignment to other carriers’ customers until the date that numbering administration guidelines, plan or rules are established, and to comply with such guidelines, plan or rules after that date. *See Virginia Order*, Appendix C, ¶ 61.

61. North County’s claim has nothing to do with Verizon WV’s compliance with the industry guidelines and procedures for access to telephone numbers. North County’s claim relates to how 555 traffic should be treated for intercarrier compensation purposes. The assignment of 555 numbers is the responsibility of the North American Numbering Plan Administrator (“NANPA”), not Verizon WV.

62. The Commission concludes that Verizon WV satisfies Checklist Item 9.

Checklist Item 10: Access to Databases and Signaling

63. Section 271(c)(2)(B)(x) requires Verizon WV to provide competitors with access to databases and signaling necessary for call routing and completion.

64. The Commission concludes that Verizon WV satisfies Checklist Item 10.

Checklist Item 11: Local Number Portability

65. Section 271 (c)(2)(B)(xi) of the Act requires Verizon WV to comply with FCC rules regarding local number portability (“LNP”). That section requires “[u]ntil the date by which the [FCC] issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of *functioning*, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.” Number portability is defined in Section 3(30) of the Act as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” *Virginia Order*, Appendix C, ¶ 63. The Commission concludes that Verizon WV satisfies Checklist Item 11.

Checklist Item 12: Local Dialing Parity

66. Section 271(c)(2)(B)(xii) of the Act requires Verizon WV to provide nondiscriminatory access to the services and information necessary to allow competing providers to implement local dialing parity in accordance with the requirements of Section 251(b)(3) of the Act. “Dialing parity” is defined by the Act to mean that a CLEC

that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation from among 2 or more telecommunications services providers (including such local exchange carrier). 47 U.S.C. § 3 (15).

Section 251(b)(3) requires Verizon WV

to provide dialing parity to competing providers of telephone exchange service and . . . to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

67. The Commission concludes that neither the Act nor any FCC rule or decision requires that an ILEC, such as Verizon WV, must do the “heavy lifting” for the CLEC in negotiating interconnection agreements and exchanging traffic with other carriers on the other side of the LATA boundary in another state.

68. The Commission concludes that Verizon WV satisfies Checklist Item 12.

Checklist Item 13: Reciprocal Compensation

69. Section 271 (c)(2)(B)(xiii) of the Act requires Verizon WV to offer access and interconnection that includes reciprocal compensation arrangements in accordance with Section 252(d)(2). Section 252(d)(2) requires reciprocal compensation arrangements that provide for mutual and reciprocal recovery of costs associated with the transport and termination on one carrier's network of calls that originate on the network of another carrier. *Virginia Order*, Appendix C, ¶ 66.

70. The FCC has consistently held that whether a BOC pays reciprocal compensation for Internet-bound traffic is "irrelevant to checklist item 13." *See New Jersey Order*, ¶ 160; *Pennsylvania Order*, ¶ 119; *New York Order*, ¶ 377.

71. The disputes of FiberNet and AT&T over reciprocal compensation over Internet-bound traffic are irrelevant to Checklist Item 13.

72. Any individual disputes related to the payment of reciprocal compensation shall be resolved by the Commission in an appropriate proceeding.

73. The Commission concludes that Verizon WV satisfies Checklist Item 13.

Checklist Item 14: Resale

74. Section 271(c)(2)(B)(xiv) of the Act requires Verizon WV to make telecommunications services available for resale in accordance with the requirements of Section 251(c)(4) and 252(d)(3). Section 251(c)(4)(A) requires Verizon WV "to offer for resale at wholesale rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers." Section 251(c)(4)(B) prohibits "unreasonable or discriminatory conditions or limitations" on resale. Section 252(d)(3) sets forth the methodology for determining "wholesale rates."

75. The Commission concludes that Verizon WV satisfies Checklist Item 14.

Public Interest Test

76. Section 271(d)(3)(C) imposes an obligation on the FCC to make a determination that the granting of Section 271 approval is in the "public interest." In order to make this determination the FCC assesses whether the record as a whole shows that the local telecommunications market is irrevocably open to competition, and whether any other relevant factors exist which would frustrate the Congressional intent to open local markets.

77. In spite of the current relatively low level of competition, it appears that the local market is open, that Verizon is provisioning wholesale service requests on a reasonable and non-discriminatory basis, and that CLEC market share is growing. The reductions in UNE rates which will result from the Joint Stipulations submitted in this proceeding and the Gap/Remand/Merger proceeding should encourage new CLECs to enter West Virginia and existing CLECs to enter new market areas. Accordingly, the Commission concludes that it is in the public interest to move forward and allow competition. CLECs and Verizon may offer both local and long distance telecommunication services to West Virginia customers.

Carrier-to-Carrier Guidelines

78. The Commission concludes that requiring affirmative Commission action prior to making any change to the C2C Guidelines will result in unnecessary Commission intervention in proposed changes to which there is no objection. The process for updating the C2C Guidelines outlined above shall be adopted. That process provides any interested party the opportunity to object to proposed changes. Thus, only when objections are raised will the Commission be required to take action regarding a proposed change.

79. Replication of metrics reports by a State is not a prerequisite to 271 authority in that state.

80. Full replication is complex and time-consuming, and would place an unnecessary burden on the Commission's resources. Additionally, the Commission is not convinced that replication will provide a benefit that will justify the associated costs. The Commission notes that the PAP provides for annual audits of Verizon WV's data and data reporting, including data reliability issues. The Commission concludes that it is not necessary, at this time, to order replication of Verizon WV's metrics reports. However, the Commission may re-examine this issue if actual experience or an audit reveals issues that warrant a change in this position.

81. The Commission concludes that requiring Verizon WV to file corrected C2C performance reports is reasonable and not unduly burdensome. Accordingly, Verizon WV shall be required to file corrected performance reports within 30 days of discovery of any error in a previously provided report.

82. In approving the C2C guidelines, the Commission is relying upon the fact that the C2C reports are retained by Verizon WV for five years. Any change in the retention policy should not be made unilaterally by Verizon WV. Accordingly, Verizon WV shall be required to seek Commission approval prior to making any change in its C2C report document retention policy.

83. The Commission concludes that the proposed C2C Guidelines, with the addition of OR-6-04, provide a comprehensive set of measures that will enable the Commission and the parties to monitor Verizon WV's wholesale performance. The C2C Guidelines, with the addition of OR-6-04, including the performance benchmark set forth above, are accordingly adopted.

Performance Assurance Plan

84. The WV PAP provides for incentive payments that will prevent Verizon WV from "backsliding" after Verizon WV receives authority to provide competitive long distance service in West Virginia.

85. The Commission adopts the proposed PAP with an effective date of February 1, 2003.

86. The Commission has jurisdiction pursuant to *West Virginia Code* § 24-2-7 to issue any necessary orders regarding unreasonable, insufficient or discriminatory practices and to determine, declare and by order fix reasonable practices or services to be furnished, imposed, observed and followed by the utility in the future. *West Virginia Code* § 24-4-3 allows the Commission to impose fines, or civil penalty, up to five thousand dollars for failing to comply with a Commission order under *West Virginia Code* § 24-2-7. *West Virginia Code* § 24-4-8 allows the Commission to impose a separate civil penalty for each day of a violation.

87. With this order adopting the proposed PAP, C2C guidelines and associated metrics, the Commission is, pursuant to *West Virginia Code* § 24-2-7, establishing what the Commission deems to be reasonable practices and services to be followed and provided by Verizon WV.

88. The Commission has the authority pursuant to *W. Va. Code* § 24-2-7 to adopt and enforce against Verizon WV a performance assurance plan.

89. The Commission has the authority to enforce a plan that has been agreed to by Verizon WV. *See, e.g., Commission Order*, Case No. 01-0318-T-GI, *et al.* (October 3, 2001) (approving Incentive Regulation Plan with provisions for public interest projects to be undertaken by Verizon WV).

90. Verizon WV has agreed to the proposed PAP and to be bound by it until it is terminated in accordance with the terms stated in the PAP.

Civil Penalties

91. The Commission believes that it is necessary for the creation of an additional process to ultimately include provisions for Commission imposed fines. The civil penalties will be based upon a Commission established second tier of performance measurements and standards, similar to the PAP, which will trigger self implementing civil penalties to be paid by Verizon. The second tier criteria will be established at levels below the PAP and will be indicative of unacceptable performance below the PAP levels.

92. The Commission believes these penalties will only apply to truly poor performance, below PAP standards, and is necessary to ensure the greatest opportunity for competition.

93. The Commission will establish, by this order, a separate proceeding for the purpose of establishing the second tier of measurements and standards which will trigger civil penalties. In addition, this proceeding will also establish the amount of penalty to be paid when the second tier criteria are not met.

“Track A” Compliance

94. The Commission concludes that Verizon WV satisfies Track A.

95. The Commission concludes that Verizon WV’s entry into the long distance market is in the public interest.

96. The Commission concludes that Verizon WV’s satisfaction of its obligations under the competitive checklist ensures that the local exchange market in West Virginia is open to competition.

97. The Commission concurs with the FCC that “BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.” *Virginia Order* ¶ 198.

98. The Commission concludes that the public interest does not require consideration of factors that are outside the scope of the requirements of section 271(c) as the Act expressly prohibits use of the public interest inquiry to add local competition requirements beyond those set out by Congress in the competitive checklist.

Remainder of Joint Stipulation

99. In addition to the findings made pursuant to Checklist Item 2, above, that the pricing provisions of the Joint Stipulation are reasonable and in the public interest, the

Commission concludes that the remainder of the Joint Stipulation to be reasonable and in the public interest.

Conclusion

100. In its consultative role to the FCC under Section 271 (d)(2)(B), the Commission will recommend to the FCC that Verizon WV has complied with the provisions of Section 271(c) and will provide this Order and Consultative Report to the FCC.

ORDER

IT IS THEREFORE ORDERED that the Commission hereby determines that Verizon WV is in compliance with the fourteen-point checklist contained in Section 271 of the Act.

IT IS FURTHER ORDERED that the Commission hereby directs its Executive Secretary to submit this Commission Order and Consultative Report to the Federal Communications Commission in fulfillment of the Commission's duties pursuant to Section 271 of the Act.

IT IS FURTHER ORDERED that Verizon WV shall:

- 1) Timely provide, on the company's website, information noting the central offices in which collocation arrangements have been returned, and to timely update that information. With regard to "timely," the Commission shall require the posting and updating of such information within 10 business days of the return, or reassignment, of collocation arrangements.
- 2) File corrected carrier-to-carrier performance reports within 30 days of discovery of any error in a previously provided report.
- 3) Shall seek Commission approval prior to making any change in its C2C report document retention policy.
- 4) Shall use a "coordinated" EEL ordering process. To that end, Verizon WV shall file tariff sheets setting forth the coordinated EEL ordering process within 30 days of the date of this order.
- 5) Prior to assessing any "per dip" (per inquiry) directory systems inquiry charge, where permitted to do so under applicable interconnection agreements, make an appropriate filing with the Commission for approval of such charge.

- 6) Adhere to the reduced switching rates set forth in the Joint Stipulation, until January 1, 2006, unless the Commission reopens or reconsiders any UNE pricing issue prior to that date. Verizon WV shall not modify the switching rate set forth in the Joint Stipulation without Commission approval, even if the status of UNE switching rates is modified by the FCC.
- 7) Adopt OR 6-04 in its Carrier-to-Carrier guidelines, effective with the data month of December 2002 or as soon thereafter as possible.
- 8) Attend the quarterly Staff-supervised business-to-business meetings between Verizon WV and CLECs with representatives of sufficient stature to answer questions and resolve problems that are brought to Verizon WV's attention.
- 9) Update the C2C Guidelines according to the process set forth above.
- 10) Follow all directives of the Commission, as set forth in the body of this order. This summary is provided in an ordering paragraph as a convenience to the parties.

IT IS FURTHER ORDERED that any individual disputes related to the payment of reciprocal compensation shall be resolved by the Commission in an appropriate proceeding.

IT IS FURTHER ORDERED that the C2C Guidelines, with the addition of OR-6-04, and the performance benchmark set forth above, are accordingly adopted.

IT IS FURTHER ORDERED that the proposed Performance Assurance Plan is adopted.

IT IS FURTHER ORDERED that the Commission will not tolerate any unwarranted imposition of the Automated Embargo System as a means of bringing pressure on CLECs involved in legitimate billing disputes with Verizon WV. CLECs may file formal complaints including requests for immediate, interim relief in those situations in which they are threatened with an improper embargo for failure to pay disputed charges.

IT IS FURTHER ORDERED that the Joint Stipulation filed on October 15, 2002, is hereby adopted in resolution of the reduction of Verizon WV's loop and switching UNE rates, among other matters. The Commission's approval of the Joint Stipulation does not preclude Staff's or CAD's participation in any UNE pricing cases instituted before January 1, 2006, as described herein.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall create a docket for continued Commission review of the "no facilities/special access" issues raised in this proceeding. A Commission order is forthcoming establishing a work group in this proceeding which shall address: (1) the activities Verizon WV defines as "construction;" (2) how the special access rates charged by Verizon WV compare to its costs of such "construction," and whether specific non-recurring charges can be established for the principal types of construction identified by Verizon WV; (3) whether permanent special access metrics should be adopted, and if so, what those metrics should be; and (4) whether any monetary consequences should flow from Verizon WV's failure to meet any special access metrics that may be established. Notice and early procedural requirements are set forth above.

IT IS FURTHER ORDERED that the above described docket shall also include a review of Verizon WV's directory listings process. In this regard the work group described above shall also: (1) develop a metric measuring the accuracy of the information contained in the LVR to the information contained in the LSR/LSRC; (2) develop appropriate metrics for inclusion in the C2C guidelines; (3) address whether any metric ultimately developed should be included in the Critical Measures portion of the PAP; and (4) determine whether, as an alternative to adoption of metrics, that a process for CLECs direct interface with VIS should be established.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall create a docket to establish the second tier of measurements and standards which will trigger civil penalties, and the amounts of those penalties, relating to performance under the Performance Assurance Plan. A Commission order is forthcoming establishing the procedures to be followed in this proceeding.

IT IS FURTHER ORDERED that upon entry of this order, this case shall be removed from the Commission's docket of active cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

/s
JAMES D. WILLIAMS, Chairman

/s
MARTHA Y. WALKER, Commissioner

/s
CHARLOTTE R. LANE, Commissioner

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